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# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1592

CAROLEE BIDDY,
PETITIONER,

*v.*

STATE OF MISSISSIPPI,
RESPONDENT.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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STATE OF MISSISSIPPI,
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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

The petitioner, Carolee Biddy, respectfully prays that a rit of certiorari issue to review the judgment and opinions f the Supreme Court of the State of Mississippi.

### Opinions Below

The Mississippi Supreme Court's unreported opinions on ppeal and or rehearing appear in Appendix A & B erein, pages 23 & 38.

## Jurisdiction

The Mississippi Supreme Court affirmed the conviction on January 8, 1973, and denied a petition for rehearing on February 26, 1973. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1257 (3).

## Question Presented

Whether *Miranda* is violated when police induce incriminating statements after an attorney (obtained for petitioner by her husband) left the police station because of illness, and before the arrival of a second attorney known by police to be on his way to see petitioner.

## Constitutional Provisions Involved

Fifth Amendment, U. S. Constitution:

> No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . .

Sixth Amendment, U. S. Constitution:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

Fourteenth Amendment, U. S. Constitution:

> Section 1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

## Statement of the Case

The first trial of petitioner for murder of her six year old stepdaughter, Mona, resulted in a mistrial. At the second trial in the Circuit Court of Jackson County, Mississippi, petitioner was, on September 5, 1971, convicted by a jury of manslaughter and sentenced to a term of twenty years in the state penitentiary. The Mississippi Supreme Court affirmed this conviction (Appendix A) and denied a petition for rehearing (Appendix B).

During the first trial an evidentiary hearing was held on May 26, 1971, outside the presence of the jury, regarding the admissibility under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), of statements made by petitioner on December 27 and 28, 1970, to law enforcement officers (see Appendix C). By stipulation this evidentiary hearing and "the previous objections made by counsel for the defendant" were made a part of the record of the second trial, whereupon defense counsel orally renewed his motion to suppress the petitioner's statements, declaring that "[t]he defendant objects to ... the admissibility of the statement in its entirety ..." (Tr. 53-54). The trial judge denied this motion, stating, "I will rule that the *Miranda* requirements have been met ... and that the statements are admissible" (Tr. 55). In her motion for a new trial petitioner alleged that "[t]he Court erred in allowing the statement made on December 27, 1970, to be introduced in evidence, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States" (Tr. 1074). On appeal to the Mississippi Supreme Court petitioner contended that "[t]he two oral statements made by appellant were inadmissible, under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States" and *Miranda* v. *Arizona, supra,* (Brief of Appellant at 14-25).

On December 3, 1970, petitioner reported the disappear-

ance of her six-year-old mentally retarded stepdaughter, Mona (Tr. 62, 73, 82, 278). Jackson Detective Lieutenants Reeves and Price first talked with petitioner at home on December 4 and did so "practically every day" thereafter (Tr. 278, 301, 349). On December 8, 1970, Mona Biddy was found dead at the Barnett Reservoir, about thirteen miles from petitioner's home (Tr. 294, 300).

On December 15, 1970, the detectives called petitioner to police headquarters to identify an article of clothing. They honored petitioner's request to have her husband present (Tr. 279), but then the two detectives and the prosecuting attorney took petitioner to a room by herself and asked her to recite the details of the disappearance, which she did. Petitioner was then advised of her *Miranda* rights by Lt. Price and questioned as to her involvement, which she denied and questioning ceased (Tr. 280-282, 304, 339-341, 360-363). Police then told petitioner's husband "that we thought that Mrs. Biddy was involved in the disappearance of Mona Biddy" (Tr. 341). Mr. Biddy was not questioned about his involvement in Mona's disappearance because police had focused their suspicions solely on petitioner by that time (Tr. 304).

The same day petitioner was taken to the highway patrol headquarters where she was again advised of her *Miranda* rights (Tr. 368). That same evening Mr. Biddy asked the detectives to come to his home, where they encountered Mr. Charles Wright, whom they "knew was a lawyer... a friend of the family, and represented Mr. Biddy's firm as a lawyer . . ." Though Mr. Biddy wanted the detectives to talk to petitioner, attorney Wright prevented this, saying, "this is not the time and place for that," and the detectives left (Tr. 283-284, 308).

The next night, December 16, 1970, the two detectives responded to a call from the Biddy home, where petitioner told them of escaping in her back yard from an unknown

male attacker who stabbed her in the hip (Tr. 284-285).

The night of December 26, 1970, Lt. Reeves responded to another call from the Biddy home reporting that their two-and-a-half year old daughter, Candice, had been kidnapped and found in the back yard (Tr. 285-286).

Lt. Reeves testified that about eight o'clock the morning of December 27, 1970, the two detectives met with J. Mal Sims, Jr., Mr. Biddy's business partner, solely "to get his opinion of what was going on," that Sims said Biddy's father had called Sims, expressing a desire to talk to Lt. Reeves, and that Reeves agreed to and did call Biddy's father (Tr. 308, 310). But Sims testified that the reason the two detectives gave for meeting Sims

> was to ask me if I'd contact Ted Biddy and talk to him about having his wife, let's say 'removed' from the house, so far as we all agreed that she had obviously, or most probably, had hurt herself, and could potentially someone else,... and they would like for me to talk to him, and get him to—I think the way it was put, *to get him from between the police and Mrs. Biddy,* and they wanted me to talk to him about trying to have her placed under some medical care... (Tr. 407-408. Emphasis added).

Sims told the detectives he would do what he could and they all agreed Sims would talk to Mr. Biddy's father (Tr. 408). Within two hours Sims called Mr. Biddy's father, which Sims dutifully reported to Lt. Reeves; Sims gave Lt. Reeves Biddy's father's phone number, suggesting that Reeves call him himself (Tr. 383, 408-409).

Within an hour Lt. Reeves did call Biddy's father, informing him that though petitioner and her husband were planning a week's visit with Biddy's father, they would "probably be detained" for further questioning of peti-

tioner. According to Biddy's father, Lt. Reeves stated that this was a "dangerous situation" akin to "mass murders and suicides" and that "this girl has got to have psychiatric care, either voluntary or compulsory" (Tr. 310-311, 383-385).

The two detectives had secured Mr. Biddy's promise to notify them before leaving for their visit with Biddy's father (Tr. 288, 309, 389). The morning of December 27, 1970, Biddy notified the detectives they were ready to leave. The detectives drove to the Biddy home and informed them that "it is official... the [police] Chief had ordered them to take her [petitioner] downtown" (Tr. 288-289, 389-390). Biddy's business partner Sims, who had been earlier told by police that they were going to take the Biddys downtown, testified that

> at the time that Mr. and Mrs. Biddy came from the house, they stopped and asked me—that is Mr. Biddy asked me if I would contact Mr. Charles Wright, who was our corporate attorney, and ask him to please get down to the jail right away, that he would like to have him present (Tr. 410).

Biddy also testified that he and petitioner walked over to Sims and Biddy "asked Mr. Sims to call my attorney, Mr. Charles Wright" (Tr. 391). Detective Reeves and Price knew "that Mr. Mal Sims was going to call tgeir [sic] lawyer for them" (Tr. 316).

The detectives followed the Biddys to the police station (Tr. 315, 391), where Mr. Biddy reminded them that he had contacted attorney Wright to come and be with him and the petitioner and that he did not want any questions put to her until the attorney arrived and that Biddy also wanted to be present when petitioner was questioned (Tr. 289, 392).

Detectives then placed the Biddys in separate interro-

gation rooms, first talking privately to Mr. Biddy for "an hour and a half trying to poison my mind against her" (Tr. 317, 393, 344). They told him that the clothing store denied petitioner's assertion that she modeled for it, raising the question of the actual source of the clothes she brought home supposedly in connection with her modeling job (Tr. 290, 319, 393).

Detectives informed Mr. Biddy that his wife was not going to a health studio every week as she claimed, leaving the inference that "[s]he was going somewhere [else]" (Tr. 290, 321, 354, 393).

They advised Biddy that "our investigation showed that it [the attack petitioner claimed on December 16, 1970] could not have happened that way" but was "a fake," and that the stabbing was "self-inflicted" (Tr. 290, 320, 354, 393).

They also told Biddy that the kidnapping of Candice the day before was a "hoax" (Tr. 290, 321, 354, 394).

The detectives succeeded in convincing Biddy that petitioner had probably faked these last two incidents (Tr. 290, 394). They then argued that petitioner was implicated in Mona's disappearance or death (Tr. 394), in an acknowledged effort to enlist his help in solving the case by talking with petitioner (Tr. 354-355).

The true significance of the above efforts to discredit petitioner in her husband's eyes, particularly as to the modeling and health spa visits, can be appreciated only in light of the detectives' overall attempt to make Mr. Biddy believe that there existed a clandestine relationship between petitioner and her ex-husband, Roy Dunn (Tr. 392-393). They mentioned that Dunn had been excluded from seeing petitioner when hospitalized for "nerves" (Tr. 392), and that Dunn "was calling out at the house regularly, checking on the children" (Tr. 353).

The detectives said they had three witnesses who had

seen a nightgowned woman matching petitioner's description walking in the marina area (Tr. 395). They also told Mr. Biddy that they felt that petitioner was "mentally ill," requiring commitment either by Mr. Biddy or the police (Tr. 322-323, 395).

Mr. Biddy testified that at this point he asked to speak to his wife alone but the detectives said they would have to be present and brought petitioner in (Tr. 323, 395). Mr. Biddy then began repeating to his wife what the detectives had been telling him about their investigation. But before the detectives took over the questioning and before petitioner made the admissions which are the primary subject of this Petition, the Biddys' attorney, Charles Wright, appeared at the police station (Tr. 323-324, 346, 396-400).

As the Biddys had left for the police station, Mr. Biddy's business partner Mr. Sims was asked to call attorney Charles Wright to come to the station. Mr. Sims had gone to the nearest pay phone and was told by Mrs. Wright "that Charles was ill, and I asked her if I couldn't speak with him anyway, and she got him..." (Tr. 410-411).

Lt. Reeves testified that:

> before we had very much to say [to petitioner], the phone rang, and my office told me that Mr. Charles Wright was downstairs and would like to talk to us.
>
> I immediately went downstairs and met Mr. Wright, and brought him up to the third floor, and he said he'd like to talk to Mr. Biddy. I went into the room and told Mr. Biddy... and took him out to Mr. Wright, and they conferred (Tr. 290).

Mr. Biddy testified that:

> I went with Mr. Reeves and saw Charles Wright.
>
> He was sick. He apparently had the flu. He couldn't

> talk, he had to hold his troath [sic] to talk. I told him what they were telling me, and I felt that we needed an attorney there to advise her of her rights, and that— 'please come in'.
>
> ... He told me he was sick, he couldn't even talk. He said 'I'll call another lawyer. It'll be John Poole, and he will come'. (Tr. 398)

According to Lt. Price,

> he [attorney Wright] stated that he had a fever, and that he was going to get another lawyer to come up there for him.
>
> Q. Then you knew as he was leaving, another lawyer was on his way up there, did you not?
>
> A. Yes sir... (Tr. 325).
>
> *While they* [Mr. Biddy and attorney Wright] *were gone*... I told her [petitioner] that we would like to ask her some questions, and I said 'do you understand your rights? You have been advised of your rights [twelve days] before.'
>
> [A]nd she said, yes, she understood them. (Tr. 290-291. Emphasis added.).

After attorney Wright left, Mr. Biddy resumed questioning his wife, who admitted not modeling and faking the stabbing and kidnapping incidents. Then, without giving petitioner the warnings required by *Miranda*, and without mentioning that any attorney was on his way (Tr. 334-336), Lt. Reeves took over the questioning, telling petitioner that Mona could not come back and that petitioner was sick and would never get better. Mr. Biddy testified that the detectives repeatedly urged, "[i]f it was an accident, tell us about it, and there won't be any charges." Lt. Price admitted only to mentioning the possi-

bility that it was an accident. (Tr. 291-292, 331-332, 400-401). Then petitioner made the admissions which are the primary subject of this Petition. Petitioner said that the night of December 2, 1970, Mona had drunk some "Liquid Plumr." She called a doctor who said that if Mona's mouth were not burned, she was not seriously hurt. Petitioner put Mona to bed, found her dead two hours later, panicked and drove her to the reservoir (Tr. 292-294. 434-435; Appendix C).

Lt. Reeves asked petitioner to sign a typed version of this statement so that a record would be preserved for their files should something happen to him or Lt. Price. At Reeves' request Mr. Biddy read petitioner her *Miranda* rights and Reeves began typing the statement. Then attorney Poole arrived and, after speaking with Mr. and Mrs. Biddy, informed the detectives that he did not want petitioner to sign any statements. Petitioner was then charged with murder. Telling petitioner he would see her tomorrow, attorney Poole left. (Tr. 294-296, 299, 334, 346, 435, 401).

Petitioner, who had slept no more than two hours the night before, had been kept in a small room while the detectives spoke with her husband (Tr. 318, 388, 396). The detectives knew that petitioner was a high school graduate (Tr. 341, 402), with a history of "mental problems," having undergone four weeks of shock treatment at an institution whose psychiatrist recommended a legal abortion because of these problems (Tr. 313, 465). Her treatment for emotional problems over the three weeks preceding December 27, 1970, by four different doctors included prescription of tranquilizers (Tr. 386-388). Petitioner, whose questioning on December 15 was terminated because she was crying (Tr. 341, 364), was described by her husband as being in a dazed, hysterical state of shock during questioning on December 27, and by a detective

as crying sufficiently to make her eyes swollen (Tr. 333, 396-397, 400, 403).

Shortly after eight o'clock the next morning, December 28, 1970, Lt. Reeves, without the knowledge of petitioner's attorney, knowing that petitioner's attorney was going to but had not yet returned that morning to see petitioner, and without informing petitioner of her *Miranda* rights, asked petitioner whether, though she did not have to, she would show police where she had put Mona's body. Lt. Reeves testified that he assured petitioner that no one could get her out of jail then but that she had "a fine lawyer . . . the last case I was on where Mr. Poole was the defense attorney, his client got forty-five years." Petitioner asked why attorney Poole had not spent more time talking with her yesterday, and Lt. Reeves responded that attorney Poole was more interested in watching a football game, or words to that effect (Tr. 326-327, 379-380). Petitioner consented to Lt. Reeves' request and Lt. Reeves, Lt. Price and a policewoman accompanied petitioner as she reconstructed her route to the reservoir and located an area which "looks like the place" where she had left the body. Then petitioner asked "is this the place?" Lt. Reeves said it was. They took petitioner back to the police station instead of to jail because they knew attorney Poole was coming to see her that morning. As soon as they returned attorney Poole in fact came to talk with petitioner (Tr. 296-299, 326-327, 333-337, 347-348, 376-381).

Petitioner has consistently denied killing Mona Biddy. (Tr. 337, 467).

## Reason for Granting the Writ

EXPLICATION OR REAFFIRMATION OF *Miranda* v. *Arizona* BY THIS COURT IS NECESSARY TO PREVENT COURTS FROM VITIATING *Miranda* EITHER BY EXTENDING A WAIVER OF *Miranda* RIGHTS OVER A PERIOD OF TWELVE DAYS DURING

WHICH THE DEFENDANT IS NOT IN CUSTODY, EVEN WHERE AN ATTORNEY IS REQUESTED, OR BY HOLDING THAT NO ATTORNEY IS REQUESTED WHERE HE IS IN FACT REQUESTED WITH THE KNOWLEDGE AND ON BEHALF OF THE DEFENDANT.

In affirming petitioner's conviction, the Mississippi Supreme Court disposed of the *Miranda* issue with the following three sentences of legal analysis:

> It is perfectly clear to us that Mrs. Biddy thoroughly understood her rights and that she had intelligently waived them, not once but twice in writing, and also several times orally. Even on December 27th, immediately before her statements she acknowledged that she understood her rights. There are no magic words that law officers must meticulously repeat each time they question a person. (Appendix A, p. 32)

In support of its decision the Court cited *Maguire* v. *United States*, 396 F.2d 327 (9th Cir. 1968); *Sossamon* v. *State*, 432 S.W.2d 469 (Ark. 1968); and *State* v. *Rowe*, 468 P.2d 1000 (Wash. 1970), all involving statements made within three, one and two days, respectively, of a *Miranda* warning, where the defendant was in continuous custody and no attorney was requested. The Court also cited *People* v. *Hill*, 58 Cal. Rptr. 340, 426 P.2d 908 (1967), which declined to apply *Miranda* to a trial beginning before *Miranda*, and *State* v. *Graves*, 259 La. 526, 250 So.2d 727 (1971), wherein there were two separate dissenting opinions even though the statement was exculpatory and repeated on the witness stand by the defendant. The Mississippi Supreme Court did not discuss the fact that petitioner here had last been warned of her *Miranda* rights twelve days before she gave her December 27, 1970, statement. Nor did the Court address itself to the distinction between understanding a right and waiving it:

> It is undisputed that the defendant was advised of her rights under *Miranda* several times. The testimony shows that she stated she understood the warnings, and once stated she did not need a lawyer at that time. There is, however, no proof of a waiver of those rights other than the defendant's acknowledgement that she understood, or that she did not at that time want an attorney. There is a vast difference between merely understanding one's rights on the one hand, and voluntarily and knowingly waiving the protection afforded them on the other. *People* v. *Zimmer,* 68 Misc.2d 1067, 329 N.Y.S.2d 17, 21 (Co. Ct. 1972).

Not raised or considered below is the problem that communicating with a party known to be represented by counsel without the latter's prior consent violates Canon 7 of the A.B.A. Code of Professional Responsibility, Disciplinary Rule 7-104 (A)(1). Applying the canons, the court held in *United States* v. *Thomas,* 474 F.2d 110, 112 (10th Cir. 1973), that a statement obtained from a defendant who has counsel may not be offered in evidence unless the attorney is notified and afforded a "reasonable opportunity" to be present.

In denying petitioner's petition for rehearing, the Mississippi Supreme Court cited no law whatever but relied on factual assertions:

> After a careful search of the record, we find that nowhere in this record does Mrs. Biddy, the appellant, request, indicate, hint or express a desire to speak with or consult an attorney; although she was well aware that an attorney was available. Nowhere in any shape, form or fashion does she express a desire to have an attorney present during any questioning,

> nor does her husband express any wish or desire to have an attorney present. (Appendix B, p. 39)

The Court was wrong because the record does reflect that immediately upon arrival at the police station on December 27, 1970, petitioner's husband did request that petitioner not be questioned until her attorney arrived (Tr. 392). Nonetheless the Court's statements go to the heart of this Petition: will this Honorable Court permit courts to make the sophistical assertion that no attorney was requested, when in fact the petitioner's husband in her presence and on her behalf requested an attorney and then requested that questioning be delayed pending his arrival? The Mississippi Supreme Court's total reliance on a factual rationale for its decision prompts similar emphasis on the facts by petitioner. Accordingly pertinent data from the Statement of the Case will be highlighted here.

Petitioner was warned of her *Miranda* rights December 15, 1970, twelve days before her December 27 statement. By December 15, police had already focused their suspicions solely on petitioner, which suspicions had only deepened by the time of the obviously custodial interrogation in which the admissions were made. Accordingly it is undisputed that this is a case to which *Miranda* applies.

The detectives worked assiduously through Mr. Biddy's father and his business partner, Sims, and finally directly to induce Mr. Biddy to allow police unfettered access to petitioner.

It is undisputed that Mr. Biddy in the presence and on behalf of his wife asked Sims to call attorney Wright, as the detectives well knew. Upon arriving at the police station Mr. Biddy requested that petitioner not be questioned until the arrival of attorney Wright, who had prevented police from questioning her at home the night of December 16.

The detectives then systematically discredited petitioner in her husband's eyes, insinuating everything from insanity to adultery, until they rendered him in effect their agent in questioning petitioner.

Before petitioner made the directly incriminating admissions, her attorney, Wright, appeared at the station as her husband had requested. Though petitioner's husband entreated attorney Wright to stay, he informed both Mr. Biddy and the detectives that he was too sick to remain, but would send attorney Poole to replace him.

The Court below made much of petitioner's silence regarding an attorney. It seems clear first that she was in such an emotional state, partly engendered by her own husband's inquisitorial conduct, that she was unable to protect her interests, prompting her husband on her behalf at least to request counsel. Secondly, it appears that the police exploited Mr. Biddy's ambivalence towards petitioner, selecting him to go speak with Attorney Wright, while leaving the suspect petitioner in the interrogation room.

While petitioner's husband was absent speaking with attorney Wright, Lt. Reeves says he told petitioner he wished to question her, though he did not then do so. At no time before her admissions did Reeves advise her of her *Miranda* rights; he merely asked whether she understood her rights. Nor did she "waive" any rights; she merely indicated, according to Reeves, that she understood in her present state something she had heard twelve days ago (Tr. 335-336).

After attorney Wright left, and knowing but not mentioning that attorney Poole was on his way, Mr. Biddy and Lt. Reeves then secured petitioner's damaging admissions. Only Poole's arrival prevented Reeves from obtaining a signed statement. The kernel of this case is contained in Lt. Reeves' answer to a question of attorney Poole:

> Q. You got a full statement from her... between the time that Mr. Wright said he couldn't be [stay] there, and the time I was on my way [arrived]?
> A. Yes sir. (Tr. 323)

The same violation of *Miranda* and subversion of the right to the effective assistance of counsel occurred the next morning when, without a *Miranda* warning, and without mentioning to petitioner that her attorney was expected that morning, the detectives induced petitioner, in the absence of her attorney, to show them where she had placed Mona's body.

Just as they had labored to turn Mr. Biddy against his wife, the detectives now tried to make petitioner distrust her attorney, who, they assured her, obtained a forty-five year sentence for his last client; her prospects were equally gloomy since the attorney would rather watch a ballgame than speak with her. This is a literal mockery of *Miranda*. Should this Honorable Court decide that *Miranda* now needs no further explication, perhaps at least it could ensure that *Miranda* is in this case not flouted.

It was above noted that petitioner was unquestionably entitled to *Miranda* warnings. The question remains whether petitioner's December 15 waiver remained effective, or became stale, during the ensuing twelve days during which she was not in custody. *Miranda* v. *Arizona*, 384 U.S. 436, 474 (1966), does not mince words when there has been a request for counsel:

> If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with an attorney and have him present during any subsequent questioning.

Here, after an attorney was requested, instead of the questioning ceasing, it was begun. This is clearly offensive to *Miranda, supra,* at 475, which makes abundantly clear that a waiver, to be effective, must be linked closely *in time* to any confession: "(a)n express statement that the individual is willing to make a statement and does not want an attorney *followed closely by a statement* could constitute a waiver." (Emphasis added).

In *Brown* v. *State,* 252 A.2d 272 (Md. 1969), the accused was interrogated and waived his *Miranda* rights one night and the next day was interrogated anew without a new warning. Holding the subsequent confession inadmissible, the Court stated that among the factors to be considered was whether the second interrogation was by "the same officer, or in the same place, or were close together in point of time . . ." Petitioner's case involves, not a one day but a twelve day hiatus, with no intervening interrogation.

The time periods tolerated have not even approached the instant twelve-day lapse. See *Maguire* v. *United States,* 396 F.2d 327 (9th Cir. 1968) (three days); *State* v. *Magee,* 245 A.2d 339 (N.J. 1968) (two and a half days). The general rule, therefore, seems to be that "[q]uestioning may be interrupted for brief periods without having to give warnings anew . . . as long as the delay is not long enough to convert the matter into a separate transaction entirely." George, Jr. *Defending Criminal Cases* (PLI, 1969), at 161. *Cf. Commonwealth* v. *Bennett,* 282 A.2d 276 (Pa. 1971); *State* v. *Davis,* 157 N.W.2d 907 (Iowa 1968) ("too remote in time"); *Commonwealth* v. *Hoss,* 283 A.2d 58 (Pa. 1971) (a "several hour" delay was tolerable since the accused was not moved and there was a "clear continuity" of interrogation). Whether earlier warnings are sufficient for a later interrogation can only be determined by a case-by-case inquiry. *People* v. *Bynum,* 483 P.2d 1193 (Cal. 1971). In *Nettles* v. *State,* 248 So.2d 259 (Fla. 1971), the Court

commented that if *Miranda* warnings are necessary, a warning given six days before a confession would *not* be sufficient. And, speaking broadly, the Court in *People* v. *Schenck,* 101 Cal. R. 75 (1972), stated that "where substantial intervals of time occur between the initial warning and the succeeding interrogation," a new warning may be required. Similarly, in *Franklin* v. *State,* 252 A.2d 487 (Md. 1969), the accused was warned of his rights on September 4 and interrogated on September 5 and 6 without renewed warnings. The Court held a confession made on the final day inadmissible: "proof showing only that the *Miranda* warnings were given on September 4 would fall short of compliance with the dictates of the *Miranda* decision." Even if Mrs. Biddy's waiver did not turn "stale," the *Miranda* warnings themselves lost effectiveness over the twelve-day interval between warning and final interrogation. Petitioner here urges that application of existing law would show that the delay between interrogations required new *Miranda* warnings.

But assuming *arguendo* that the December 15 waiver was still effective, did the December 27 requests for counsel withdraw the waiver?

That a waiver, once made, can be withdrawn at any time is hornbook law. *Stevens* v. *Marks,* 383 U.S. 234 (1965); 2 Han. Civ. Rts. – Civ. Lib. L.R. 144, 153 (1966); 42 *Notre Dame Lawyer* 479, 489.

> A valid waiver ceases to be effective whenever the accused indicates in any manner that he wishes to remain silent or that he wants an attorney.
>
> *Miranda* v. *Arizona, supra,* at 474.

When a lawyer is requested, any earlier waiver must be considered withdrawn. *Frazier* v. *U. S.,* 419 F.2d 1161

(D.C. Cir. 1969). Requesting an attorney must be regarded as a "change of mind" concerning the earlier waiver. *Cf. People* v. *Pervin,* 55 Cal.R. 847 (1967). Therefore, once an attorney has been called, all interrogation must cease, as if the defendant had explicitly reasserted his unwillingness to talk. *People* v. *Paulin,* 308 N.Y.S.2d 883, *aff'd,* 255 N.E.2d 164 (1969); *People* v. *Randall,* 464 P.2d 114 (Cal. 1970); *People* v. *Ireland,* 450 P.2d 580 (Cal. 1959) (here statement "call my parents for an attorney" held to be invocation of Fifth Amendment privileges). *Cf. Frazier* v. *Culp,* 394 U.S. 731, 738 (1969), and *State* v. *Magee, supra* (dictum);

> If at any time the suspect indicates 'in any manner' that he wishes to remain silent or that he wishes to consult with an attorney before speaking to police, there must be no further questioning, *even if an earlier waiver was validly obtained. Waiver of Rights in Police Interrogations,* 36 Chicago L.R. 413, 419 (1969) (Emphasis added).

In *Pierce* v. *State,* 451 S.W.2d 219 (Ark. 1970), the accused signed a waiver and then immediately called his attorney. The Court, holding the subsequent confession inadmissible, stated that "the accused has an unqualified right to stop the questioning at any stage and request that he be permitted to consult with an attorney." Similarly, in *United States* v. *Crisp,* 435 F.2d 354 (7th Cir. 1970), the accused signed a waiver of rights and then merely said that he didn't want to discuss the crime (a bank robbery). The Court held that later conversations—admittedly not concerned with that bank robbery—were inadmissible. The Fifth Circuit has held that:

> ... Where there is a request for an attorney prior to any questioning, as in this case, a finding of knowing

> and intelligent waiver of the right to an attorney is impossible.... If such a request is disregarded and the questioning proceeds, any statement taken thereafter cannot be a result of waiver but must be presumed a product of compulsion, subtle or otherwise.
>
> *United States* v. *Priest*, 409 F.2d 491, 493 (5th Cir. 1969)

Even apart from the question of waiver, courts since *Massiah* v. *U. S.*, 377 U.S. 210 (1964), have not favored interrogation in the absence of counsel once the police know that the accused has counsel. *Taylor* v. *Elliot*, 458 F.2d 979 (5th Cir. 1972); *People* v. *Gunner*, 257 N.Y.S.2d 924 (1965); *People* v. *Donovan*, 243 N.Y.S.2d 841 (1964); *Commonwealth* v. *McKenna*, 244 N.E.2d 560 (1969). See also, *United States* v. *Four Star*, 428 F.2d 1406 (9th Cir. 1970); *United States* v. *Smith*, 379 F.2d 628, 633 (7th Cir. 1967).[1]

In *U. S. ex rel. Magoon* v. *Reincki*, 416 F.2d 69 (2d Cir. 1969), the police knew only that an attorney had been contacted and that the accused was "awaiting (his) arrival." The Court struck down the confession obtained in the interim period. And similarly, in *People* v. *Vella*, 287 N.Y.S.2d 369 (1967), the accused was released after arraignment in one court and immediately apprehended and interrogated by police from another jurisdiction—without the presence or consent of the attorney appointed in the earlier arraignment. Furthermore, the accused apparently

[1] Of course this principle is applicable not only to petitioner's statement of December 27, but also to her drive with detectives to the reservoir on December 28 before attorney Poole's arrival. "Neglect to notify counsel of a planned interrogation is as effective in preventing consultation as the physical barrier which confronted Escobedo's attorney at the jail house door." *United States* v. *Wedra*, 343 F.Supp. 1183 (S.D.N.Y. 1972).

waived his *Miranda* rights during the interrogation. Nonetheless, the Court struck down the confession, holding that "[s]uch interrogation, despite the defendant's 'waiver' of his rights to counsel, was impermissible."

Clearly the police cannot interrogate the suspect while waiting for the attorney to arrive. In *Wakeman* v. *State*, 237 So.2d 61 (Fla. 1970), the defendant's attorney was called and he advised that he would immediately come to the police station. During the interim the defendant was questioned, advised of her rights, which she waived in writing, and induced to sign a confession. Then her attorney arrived. The Court held the confession inadmissible because obtained in derogation of defendant's Fifth and Sixth Amendments rights. See also, *Petree* v. *State*, 451 S.W.2d 461 (Ark. 1970); *State* v. *Harrison*, 251 N.E.2d 521 (Ohio 1969); *State* v. *Word*, 456 P.2d 210 (N.Mex. 1969).

It is a specious contention that petitioner did not have counsel because her husband requested counsel for her. In *People* v. *Arthur*, 22 N.Y.2d 325, 329 (1968), the defendant threw his child in the river. Attorney Stern, who had known the defendant for two years and had represented him in several matters, heard of this on the news and went unasked to the police station to see the defendant, because "he felt he had an obligation to the defendant." The next day in the absence of an attorney the defendant made incriminating statements which the Court ruled inadmissible because

> once the police know ... that the defendant is represented by counsel or that an attorney has communicated with the police for the purpose of representing the defendant the accused's right to counsel attaches; and this right is not dependent upon the existence of a formal retainer.

Nor is it significant that Mr. Stern did not, immedi-

> ately upon his arrival at Police Headquarters, instruct the police not to take any statements from the defendant.... Once an attorney enters the proceeding, the police may not question the defendant in the absence of counsel unless there is an affirmative waiver, in the presence of the attorney, of the defendant's right to counsel...

The Mississippi Supreme Court, however, even in following *Miranda,* has clearly expressed its reluctance to do so. *Brunson* v. *State,* 264 So.2nd 817 (1972). Perhaps this lack of sympathy with *Miranda* betrayed the Court into straying in this case from *Miranda's* precepts.

## Conclusion

For these reasons a writ of certiorari should issue to review the judgment and opinions of the Mississippi Supreme Court.

Respectfully submitted,

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## APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

No. 47,095
No. 47,100
MRS. CAROLEE BIDDY
*v.*
STATE OF MISSISSIPPI
[January 8, 1973]

ROBERTSON, *Justice:*

Mrs. Carolee Biddy was indicted by the Hinds County Circuit Court Grand Jury for the murder of her 6-year-old stepdaughter, Mona Biddy. A change of venue was granted to the Circuit Court of Jackson County, where appellant was tried for murder, but convicted of manslaughter by a Jackson County Petit Jury. She was sentenced to serve a term of 20 years in the State Penitentiary.

About 7:55 A.M. on December 3, 1970, appellant called the Jackson Police Department to report the disappearance of Mona Biddy, her mentally retarded stepdaughter. A massive search was conducted by the Jackson Police Department, law enforcement officers of Hinds and Rankin Counties, three or four hundred National Guardsmen, and many civilians and students.

On December 8th, five days after her reported disappearance, Mona's body was found by two fishermen in a cove on the Rankin County side of the Barnett Reservoir. Her body was at the water's edge and water from time to time would lap over it.

The first assignment of error was that the corpus delicti was not proven to the exclusion of every reasonable theory consistent with innocence.

The corpus delicti in a homicide case consists of two fundamental facts: (1) The fact of the death of the

deceased, and (2) The fact of the existence of a criminal agency as the cause of death. *Pitts* v. *State,* 43 Miss. 472 (1870). Both facts of the corpus delicti may be proved by circumstantial evidence. *Perkins* v. *State,* 160 Miss. 720, 135 So. 357 (1931).

On the afternoon of December 8, 1970, immediately after the body had been found, Dr. Forrest Bratley, a skilled and experienced pathologist, performed a complete autopsy on Mona's body at the University Medical Center in Jackson. His detailed written findings (a part of the record) ended with Dr. Bratley's positive opinion that the most probable cause of death was suffocation. The report also stated:

> "The complete postmortem examination does not reveal any natural cause of death nor is there any evidence of any traumatic injuries which could have caused death. The toxicological examination does not reveal the presence of any poison in the blood or stomach contents."

On June 24, 1971, Mona Biddy's body was exhumed, and a second autopsy performed by Dr. Forrest Bratley in conjunction with Dr. Donald Dore, Jr., the pathologist at the Singing River Hospital in Pascagoula, Mississippi. This autopsy was performed at Barrytown, Alabama, where the child had been buried.

This second autopsy was performed for the express purpose of determining whether Mona had swallowed any Liquid Plumr prior to her death. No signs or indications of any kind were found that the child had swallowed any caustic or corrosive substance. After a very detailed and thorough examination on the witness stand, Dr. Bratley stated that in his opinion death was caused by suffocation and that this suffocation was by external application of force by someone stronger than the child. Dr. Bratley never wavered in his opinion as to the cause of death, even

though he was extensively cross-examined as to other possible causes of death and the fact that findings of death by suffocation are similar to findings of death from heart disease, shock, laryngeal spasm, bronchial spasm, respiratory arrest and cardiac arrest. From his knowledge gained from personally performing the first and second autopsies, he clearly and decisively negatived any other cause of death. On the second autopsy, he and Dr. Donald Dore found no evidence whatsoever of Liquid Plumr or other caustic or corrosive substance in Mona's digestive tract or vital orgains. If Mona had had laryngeal spasm it would have had to have been caused by drinking Liquid Plumr or other caustic substance.

Dr. Howard Nichols, a skilled and experienced pediatrician of Jackson, who had been Mona's doctor for the first 1½ years of her life, after a detailed study of both autopsy reports testified that it was his considered opinion that the probable cause of death was suffocation due to external pressure over her nose and mouth. He further testified that it was his opinion that Liquid Plumr was not involved in Mona's death.

Dr. Arthur Hume, Associate Professor of Pharmacology and Toxicology at the University Medical Center and Toxicologist for the Mississippi Crime Laboratory, examined and tested blood samples, tissues of vital organs, gastric contents and other samples from Mona's body on December 9th, 1970, the day after her body was found, for poisons and drugs. Dr. Hume testified that he would consider Liquid Plumr a poison. He found no poison of any kind in her system. He did find a slight trace of dramamine, a stomach settler.

Dr. Milton Helpern, the chief medical examiner of the city of New York, after examining the autopsy reports, testified that he could not state with certainty the cause of death. He testified as to possible causes only.

Dr. Lucien L. Leape, a pediatric surgeon with the University of Kansas Medical School, who had made a special study of problems linked with lye ingestion by children, testified that he could not say what was the cause of death. He did testify that he had never heard of any child dying as a result of swallowing Liquid Plumr.

The testimony of all of these witnesses, and the exhibits introduced, were for the consideration of the trial jury. We feel that there was ample evidence in the record to prove the corpus delicti beyond a reasonable doubt and to the exclusion of every *reasonable* theory consistent with innocence.

The next assignment of error was that the two oral statements made by appellant were inadmissible under the fifth, sixth, and fourteenth amendments to the Constitution of the United States.

It must be remembered, in discussing this assignment of error, that the appellant and her husband, Ted L. Biddy, asked the Jackson Police Department for its help in locating their mentally retarded daughter. Every lead that the police would get was discussed and examined with the Biddys. The police were in constant touch with the Biddys and the Biddys with them. Both were apparently interested in what had happened to Mona Biddy.

It must also be kept in mind that, at the specific instance of the Biddys, the Jackson Police Department and its trained and skilled investigators and indeed the law enforcement officers of both Hinds and Rankin Counties and of the State of Mississippi, had expended a tremendous amount of time and effort and thought into solving the problem of what had happened to Mona.

On December 15, 1970, the police had found another item of clothing apparently worn by Mona at the time of her disappearance, so they contacted Mrs. Biddy, and she called

her husband. The end result was that Mr. and Mrs. Biddy came down to police headquarters.

Lieutenant Wesley L. Reeves, Jackson Police Department, who had been on the case from the beginning, in the presence of Lieutenant Price of the Jackson Police Department, and Thomas Zebert, County Attorney of Rankin County, asked Mrs. Biddy to go over once again the details of Mona's disappearance. Reeves testified that after she had done this:

"Then we told her we'd like to talk to her about it, and before we did, we would like to advise her of her rights.

"Q—All right. Now, who was in this conference room at this time?

"A—Lietenant Price, myself, and Mr. Zebert, Tom Zebert.

"Q—And you four were the only ones in there?

"A—Yes sir.

"Q—All right. Then, what did you do then?

"A—I told her that she did not have to talk to us; that she was entitled to an attorney, and what she did say could be used against her in court.

"In fact, I then told her that we had a list of her rights on a statement blank, and I would like for Lieutenant Price to read them to her, so she would understand it.

"Lieutenant Price did read this statement of her rights, one at a time, and then I asked her if she understood each, and she said she did. Mr. Zebert asked her if she understood them, and she said she did.

"We asked her what education she had, and she said she was a high school graduate. We were convinced that she understood her rights.

"Q—Did she tell you where she had been employed previously?

"A—Yes sir. She had been employed as a secretary for Michael Baker, an engineering firm.

"Q—What kind of spirit was she in at this time?

"A—She was very cooperative. She seemed to be in good spirits."

At this time she signed a written waiver, which set forth her rights in detail. Reeves, Price and Zebert then signed as witnesses to her signature. She denied any involvement in Mona's disappearance.

Later on December 15th Mrs. Biddy and her husband went in their car to Highway Patrol Headquarters. Her rights were again explained to her and she signed a second detailed waiver.

On the night of December 16th, Lieutenant Reeves, while off-duty and at his home, received a telephone call from the Biddys reporting that appellant had been attacked and stabbed. The Biddys wanted him to come to their home, so he called Lieutenant Price and they went to the Biddy home. Mrs. Biddy told them about the attack and how she had gotten away from her assailant. She had a superficial cut on her hip.

Late at night on December 26, 1970, Lt. Reeves received another telephone call from the Biddy home. It was reported to him that 2 1/2-year-old Candice Biddy had been kidnapped. It was a very cold night and Lt. Reeves went immediately to the Biddy home. Mrs. Biddy stated that someone came in the window, came by Mr. Biddy who was asleep in the den, got Candice, and went back out the window, tying up the family dog and putting him into the closet. Mr. Biddy found Candice, scantily clad, near a ditch in the Biddy backyard. Lt. Reeves checked the window that Mrs. Biddy had pointed out and found dust on the window-sill that had not been disturbed.

Lt. Reeves was advised by Mr. and Mrs. Biddy that they were going to Georgia on the next day, December 27th, to

visit Mr. Biddy's parents. Early on the morning of December 27th Lts. Reeves and Price went back to the Biddy home, looked around the backyard and the ditch but could find no evidence that someone had kidnapped Candice.

Being advised that the Biddys were ready to leave town and that Mr. Biddy would like to talk to them, the Biddys followed Reeves and Price back to police headquarters in their own car.

Out of the presence of Mrs. Biddy, Reeves and Price told Mr. Biddy that they had found that Mrs. Biddy had not modeled clothes for a local clothing store and received clothes for her services, as both Mrs. Biddy and Mr. Biddy had told them. They also told Mr. Biddy that Mrs. Biddy had not gone to a health studio once a week, as she had told them. Reeves and Price also told Mr. Biddy that their investigation of the assault and stabbing of Mrs. Biddy had convinced them that it did not happen. Mr. Biddy agreed with them. They also informed Mr. Biddy that Candice Biddy had not been kidnapped as Mrs. Biddy reported. Biddy agreed with them on this and asked to talk to his wife.

Before they had a chance to talk very much, Reeves was advised that Mr. Biddy's partner, Mal Sims, was downstairs and wanted to see Biddy. While Wright and Biddy were talking, Reeves and Price told Mrs. Biddy that they would like to ask her some questions, and before asking her any questions Lieutenant Reeves said:

> "[D]o you understand your rights? You have been advised of your rights before.' and she said, yes, she understood them.
>
> "At that time, Mr. Biddy and Mr. Wright came back. Mr. Biddy came into the room, Mr. Wright stood at the door. He had told me previously that he was ill, and would have to go home. So, he left.

"Q—Was Mrs. Biddy aware of the fact that Mr. Wright was there?

"A—He came to the door, and the door was open. She was sitting right by the door. They did not talk, but he talked to Mr. Biddy.

"Q—And did Mr. Biddy come in and talk to Mrs. Biddy?

"A—Yes sir.

"Q—All right. Tell we what happened.

"A—At that time, Mr. Biddy began to talk to Mrs. Biddy, and asking her about these different instances, about the clothing store, about the health studio, about the stabbing and the kidnapping.

"She admitted that she had not worked for the clothing store, and she partially admitted not having gone to the health studio as regularly as she had claimed to be going.

"She admitted that she had faked the stabbing, and had faked the kidnapping.

"At this time, Mr. Biddy became very emotionally upset, and —

"Q—What about the appearance of the defendant, Mrs. Carolee Biddy? How was she at this time?

"A—She was a little emotional, not very much, at that time. She seemed like she wanted to tell him something.

"At that time I told her 'Mrs. Biddy, now is a good time to tell Mr. Biddy if you were involved in the disappearance of Mona'. I told her that Mona was gone, she wouldn't — couldn't come back, and that she was afflicted, that the doctors had told us she would never get any better, and that now would be a good time to talk to her husband.

"They were sitting facing each other holding hands. She looked straight at Mr. Biddy, and said, 'Ted, I am

sorry I did it.' She said 'Ted, I didn't mean to do it.' And she broke down. She stopped what she was going to say.

Mrs. Biddy then continued her story of what happened the night of December 2nd. Mona had gotten hold of some Liquid Plumr at about 7:30 P.M., had drunk some of it, that it made her violently ill and she vomited. Mrs. Biddy tried to feed her but Mona could not eat. Mrs. Biddy called Dr. Howard Nichols, her pediatrician, and Dr. Nichols advised her to examine Mona's mouth and if her mouth was burned on the inside to call him back. If Mona's mouth was not burned, she was all right and just give her something to settle her stomach. Mrs. Biddy put Mona to bed around 8:30 P.M. Mrs. Biddy went by Mona's bed about 10:30 P.M. and found her "scooted down the bed" with the bed clothing wrapped around her head. Lt. Reeves continued:

"She said she unwrapped the bed clothing and couldn't get any response from Mona. She said this frightened her, and she picked Mona up and took her out to the den, and laid her down on the couch. She said she just flopped down.

"She said she started to call Ted, but she was afraid that people would think that she had something to do with it; that she had realized she was dead, and she was afraid to call Ted, she said.

"She started to call a doctor, and she just decided to get rid of the body, and take the body so they wouldn't blame her with it. She carried her out and put her in her car and drove to the reservoir.

"She drove to a particular spot near the Lakeview Marina, because she and Ted had spent a lot of time out there in the past. She said she put the body down near the bank, kissed it on the forehead, and left it

there so it would be found, and then she came back home."

We think that this testimony was properly admitted. It is perfectly clear to us that Mrs. Biddy thoroughly understood her rights and that she had intelligently waived them, not once but twice in writing, and also several times orally. Even on December 27th, immediately before her statements she acknowledged that she understood her rights. There are no magic words that law officers must meticulously repeat each time they question a person. This conclusion was also reached in *Maguire* v. *United States*, 396 F.2d 327 (9th Cir. 1968); *Sossamon* v. *State*, 432 S.W.2d 469 (Ark. 1968); *People* v. *Hill*, 58 Cal. Rptr. 340, 426 P.2d 908 (1967); *State* v. *Graves*, 259 La. 526, 250 So.2d 727 (1971); *State* v. *Rowe*, 468 P.2d 1000 (Wash. 1970).

Appellant next contends that the court erred in granting an instruction advising the jury that should they convict appellant of manslaughter, the court might sentence appellant to the penitentiary for a term not to exceed twenty years.

This is the instruction complained of:

"The Court instructs the Jury for the State of Mississippi that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Carolee Biddy, is guilty of manslaughter, you should certify to the Court the following verdict, to-wit:

We the Jury, find the Defendant guilty of manslaughter.

Whereupon the Court might sentence the Defendant to serve a term of years in the penitentiary, not to exceed 20 years."

This same contention was made long ago in *Stevenson* v. *State*, 136 Miss. 22, 100 So. 525 (1924). The Court in *Stevenson* answered this argument in this way:

"In the case now before us the instruction informed the jury that in case of a conviction of manslaughter the court might sentence the defendant to serve a term of years in the penitentiary, not to exceed twenty years. We do not think that this instruction can properly be said to be an invitation or inducement to the jury to compromise on the lesser offense, and, if this instruction was error at all, it was not prejudicial to the rights of the appellant and will not justify a reversal under the facts of this record." 136 Miss. at 29-30, 100 So. at 526.

In *Blalock* v. *State,* 148 Miss. 1, 113 So. 627 (1927), in ruling on a similar manslaughter instruction, the Court had this to say:

"In the case before us, the instruction on the punishment for manslaughter does not call the jury's attention to the minimum punishment, and does not, by inference, lead the jury to believe that, if so convicted, a light punishment will be inflicted. We think this distinction important between the Ellerbe case and this one. It is one thing to hold out the definition of a minimum punishment, and another to tell the jury of a maximum punishment. It was, in our opinion, the singling out, in the Filerbe case, the minimum features of punishment of manslaughter, that produced the reversal therein. It is difficult to see how it prejudices the right of a person being tried for a crime for the jury to know what the punishment is that may follow a conviction for that crime. It is true that the court administers the punishment, except in capital cases, and some others not here involved, and that the jury should not be told anything in reference to what that punishment will be; but we fail to see how the present instruction prejudiced the defendant's rights. It certainly did not lead the jury to believe he would be

dealth with leniently. The maximum was stated, and the minimum was left out.

"In so far as the effect on the jury is concerned, we cannot see it had any harmful effect upon his rights. Anything less than twenty years for manslaughter is in the discretion of the court, and it does in no wise prejudice the defendant's rights for the jury to know what the maximum would be. At least, we think it is apparent that his rights were not so prejudiced as to cause the court to reverse a judgment therefor. *Stevenson* v. *State,* 136 Miss. 22, 100 So. 525. We hold, therefore, that there is no reversible error in this objection to the instruction." 148 Miss. at 5, 113 So. at 628.

The final assignment of error was that the trial court erred in overruling the motion to vacate the judgment because the jury verdict was returned on Sunday and the trial judge sentenced the appellant on Sunday.

The five-day trial was concluded on Friday, September 3, 1971, and the jury on that day, with the exhibits and written instructions of the Court, retired to the jury room to consider what verdict they should return. They were unable to reach a verdict and they resumed their deliberations on Saturday, September 4th. Still being unable to reach a verdict, they resumed their deliberations about 9:30 A.M., Sunday, September 5th, and about 2:30 P.M., they returned their verdict in open court. Monday, September 6, 1971, would be Labor Day. So, the Court inquired of Counsel for the Defendant whether they desired that sentence be deferred until a later date. Counsel for the Defendant responded that they did not so desire. Whereupon, the Court sentenced the Defendant to twenty (20) years in the State Penitentiary.

In *Burrage* v. *State,* 101 Miss. 598, 58 So. 217 (1912), a murder prosecution was concluded on Saturday night, and

the jury returned its verdict into court at 12:06 A.M. Sunday morning. In that case, it was contended that the verdict and judgment were null and void because rendered on Sunday. This Court affirmed the conviction and sentence, stating:

> "It is true that we have no statute providing that verdicts may be received on Sunday, and it may be that a judgment rendered on Sunday is void, but 'in regard to the delivery and reception of verdicts a different rule applies, as the rendering of a verdict is a mere ministerial act, and it is an act of necessity and charity to receive it and not keep the jurors confined until Monday.' " 101 Miss. at 606-607, 58 So. at 219.

In *State* v. *Foss,* 158 La. 471, 104 So. 211 (1925), trial was begun on Friday and the taking of evidence was concluded on Saturday night at 11:20. Counsel for defendant stated to the court that he was eager to continue the trial. Whereupon, the prosecutor objected on the ground that if the trial proceeded and resulted in conviction that the continuation of the proceeding on Sunday might be urged as a ground for a new trial. Defense counsel gave his word that if the case were allowed to proceed no advantage would be taken of the fact that some of the proceedings had been held on Sunday. The case proceeded, with argument of counsel ending at 12:25 A.M. Sunday, at which time the jury was charged and the verdict was returned and recorded at 2:00 A.M., Sunday.

Appellate defense counsel (not the trial defense counsel) urged that these Sunday proceedings were void. In *Foss,* the Supreme Court of Louisiana held:

> "An accused has no right to stand by and suffer proceedings to take place on a 'statutory holiday,' and after verdict, in a motion to quash, ask to have the proceedings reversed on the ground that it was a holiday.

"The objection should not have been postponed until after verdict, nor urged for the first time in motion in arrest.

"Moreover, the proceedings on a statutory legal holiday are not necessarily null. They may be held on that day by consent. Besides, an accused may be concluded by his silence, if he chooses to remain silent when he is represented by counsel amply able to protect his rights.

. . . . . .

"[A]n accused may waive his constitutional, statutory, or common-law rights, except when forbidden by some superior counter principle of law deemed necessary for his protection.

"There is no constitutional, statutory, or common-law principle which forbids an accused party from consenting to have his case argued, submitted, and determined by the jury and court on Sunday or a statutory legal holiday. . . .

. . . . . .

"*There is who question of the waiver of jurisdiction in this case. The court and the jury were legally constituted, and were competent to try the issue of guilt or innocence between the state and the accused.* The only question was whether the case should proceed to its conclusion on Sunday or be postponed to a future day.

"*Whether a trial shall take place on one day rather than another can in no sense be said to affect the jurisdiction and competence of the court.*

"The objection is purely technical and dilatory in its nature. If it had been made at the proper time, the case would have been delayed to another day, with the same result. The defendant has suffered no detriment caused by the continuance of the trial on Sunday.

"An accused party at whose instance and on whose persuasive promise a case has been continued and concluded on Sunday, and who took the chances of an acquittal, should not be permitted, after verdict of conviction, to challenge the regularity and legality of such proceedings.

"To ignore his request and promise to the court and district attorney whereby he gained a speedy determination of his case, and to set aside the verdict on the ground urged, would be a palpable miscarriage of justice, destroy the sanctity of the court, and make a mockery of judicial procedure.

"*Our conclusion is that the prohibition of the continuance of the trial on Sunday of a case already begun does not affect the jurisdiction and competence of the court, and is not such as cannot be waived by an accused party.*" 158 La. at 475-478, 104 So. at 212-214. (Emphases added).

The judgment of the Circuit Court is affirmed.

AFFIRMED.

GILLESPIE, C.J., and PATERSON, INZER and BROOM, J.J., CONCUR.

## APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI

No. 47,095
No. 47,100
MRS. CAROLEE BIDDY
*v.*
STATE OF MISSISSIPPI
[February 26, 1973]

INZER, *Justice:*

ON PETITION FOR REHEARING

The only assignment of error in the Petition for Rehearing is:

THE COURT DID NOT FULLY CONSIDER THE ADMISSIBILITY OF THE STATEMENT OF APPELLANT.

In her brief in support of her Petition for Rehearing, appellant quotes from *Miranda* v. *Arizona*, 384 U.S. 436, 444, 445, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 707 (1966):

> *If, however, he indicates in any manner and at any stage of the process that he wishes to consult an attorney before speaking there can be no questioning . . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with an attorney and have him present during any subsequent questioning.* (Emphasis added).

In our original opinion, we discussed at length the two occasions on December 15, 1970, when appellant's *Miranda* rights were explained orally in detail, and when she signed two written waivers setting forth her rights in detail. We quoted the testimony of Lt. Reeves wherein he testified that on December 27, 1970, he again asked

Mrs. Biddy if she understood her rights, and she replied that she understood them.

After a careful search of the record, we find that nowhere in this record does Mrs. Biddy, the appellant, request, indicate, hint or express a desire to speak with or consult an attorney; although she was well aware that an attorney was available. Nowhere in any shape, form or fashion does she express a desire to have an attorney present during any questioning, nor does her husband express any wish or desire to have an attorney present.

All statements that Mrs. Biddy made on December 27, 1970, were made freely and voluntarily and mostly on the solicitation of her husband.

Ted L. Biddy, the husband of appellant Carolee Biddy, testified for the defense on direct examination as follows:

> Q. Then, if you remember, what did you say to Carolee or Detective Price or Reeves?
>
> A. Well, I was up real close to her, I had her hands in mine, I was right up next to her. I told her, I says, "Honey, I've got something very serious to say to you now. They have told me that they have found no evidence that you were attacked that night, nor that Candace was abducted last night and they believe that you staged these as hoaxes."
>
> Q. Go right ahead.
>
> A. Well, she admitted that they were true by shaking her head affirmatively that she had. She was emotional, of course, during this. I then told her that there was something else that they had told me that I wanted to tell her and that was that they had told me that they had three witnesses who had seen a woman, fitting her discription, walking around in a rose nightgown at the Main Harbor Marina on the night Mona disappeared.
>
> Q. What did Carolee go on and say, what was her story?

A. Well, Lieutenant Reeves and Lieutenant Price started talking to her and asking her about it and she says, "Well, I said I did not go in to check on Mona before I went to bed but I did." She said that she had watched some TV program and had dozed off, it was 10:30 or 11:00 o'clock, and that she went in to check on her before going to bed and she couldn't see Mona in the bed. She said all she could see was a big fluffy pillow and she went over to get her out from under the covers; it was nothing unusual for Mona, she was a hyperactive child, and she would be a lot of times under the cover. No one could sleep with Mona because she was so hyperactive. She said that she went to get her out from under the covers and pull her up in the bed, straighten her up, and the covers were all twisted around her and that when she raised the covers up that it pulled Mona up with it and when the covers came off she fell back and she knew immediately something was wrong. She said she picked her up on her shoulder and took her into the den, laid her down on the couch with her head in her lap and checked her in every possible way, her breathing, her pulse, shaking her and finally realized that she was dead.

Q. What did she then tell the policeman that she did?

A. She said that she panicked. She said she could just see my ex-wife Ruth's face; that she knew she would be blamed. She said she started to come get me. She started to call the doctor but she could just see my ex-wife's face and that she panicked. And that she picked her up, put her in the front seat of our car; she said she drove and didn't know where she was going but the next thing she remembers she was on the reservoir levee road and that she went to the

area of the Lake View Marina, took her body out of the car, took her over to the edge of the bank on a grassy spot, laid her down, kissed her and drove back home. She said she couldn't remember anything about driving back home except that the car almost went out of control one time.

In summary, it is apparent from the record in this case that all of the constitutional rights of Mrs. Biddy had been fully explained to her, she fully understood them, and with this knowledge, she freely and voluntarily made the statements complained of, mostly at the solicitation of her husband. It is not contended that she was in any way coerced, threatened or made any promises by the officers. She never at any time expressed any desire to speak with or consult with the attorney with whom her husband conferred. Neither did she express any desire to consult with any other attorney or have an attorney present before she made any statement. A statement made under these circumstances certainly should be and is admissible in evidence.

For the reasons stated the petition for rehearing is denied.

All Justices Concur.

## APPENDIX C

### Petitioner's Statement of December 27, 1970

They were sitting facing each other, holding hands. She looked straight at Mr. Biddy, and said "Ted, I am sorry I did it." She said "Ted, I didn't mean to do it." And she broke down. She stopped what she was going to say.

Then she continued and went through the story about what she said had taken place. She said that on this particular night, December the 2nd, Mona had gotten ahold of Liquid Plumr, at about seven:thirty, and drank some out in the storeroom, and it made her violently ill. It made her vomit.

She tried to feed her, and she couldn't eat. She called the doctor and asked him what to do, and he said that if her mouth was not burned, and turning kind of white, that she was not seriously hurt, and to give her something to settle her stomach.

She said then Mona went to bed at about eight:thirty. She went to bed in the room with Lee Ann, which is Mrs. Biddy's daughter, and Mr. Biddy's stepdaughter. Usually one of the little boys sleeps in this room, but for some reason they changed, and Lee Ann was to occupy the room with Mona.

She said that Mr. Biddy went to bed shortly after that, and she stayed up and watched television with her son Rocky, who is ten or eleven years old. He was studying, and she was watching T. V.

Around ten, I believe, Rocky went to bed, and at ten: thirty, she said, she started to go to bed, and she said she went by Mona's room to look in on her. She said she found her — she said 'scooted down the bed', with the bed clothing wrapped around her head.

She said she unwrapped the bed clothing and couldn't

get any response from Mona. She said this frightened her, and she picked Mona up and took her out to the den, and laid her down on the couch. She said she just flopped down.

She said she started to call Ted, but she was afraid that people would think that she had something to do with it; that she had realized she was dead, and she was afraid to call Ted, she said.

She started to call a doctor, and she just decided to get rid of the body, and take the body so they wouldn't blame her with it. She carried her out and put her in her car and drove to the reservoir.

She drove to a particular spot near the Lakeview Marina, because she and Ted had spent a lot of time out there in the past. She said she put the body down near the bank, kissed it on the forehead, and left it there so it would be found, and then she came back home.

She said the next day, the next morning, she got up and fixed breakfast. She asked her children to wake up everybody. She said one of the boys — I'm not sure which one — Jimmy, I believe, went into the room — in fact I know it was Jimmy.

He went into the room, because that's where he usually slept, to get his clothing, and he told her that Mona was not in the room, and at that time, she said, she looked and saw the door to the carport partly open from the kitchen to the carport, or the den, and she notified Ted, and they began an immediate search for Mona.

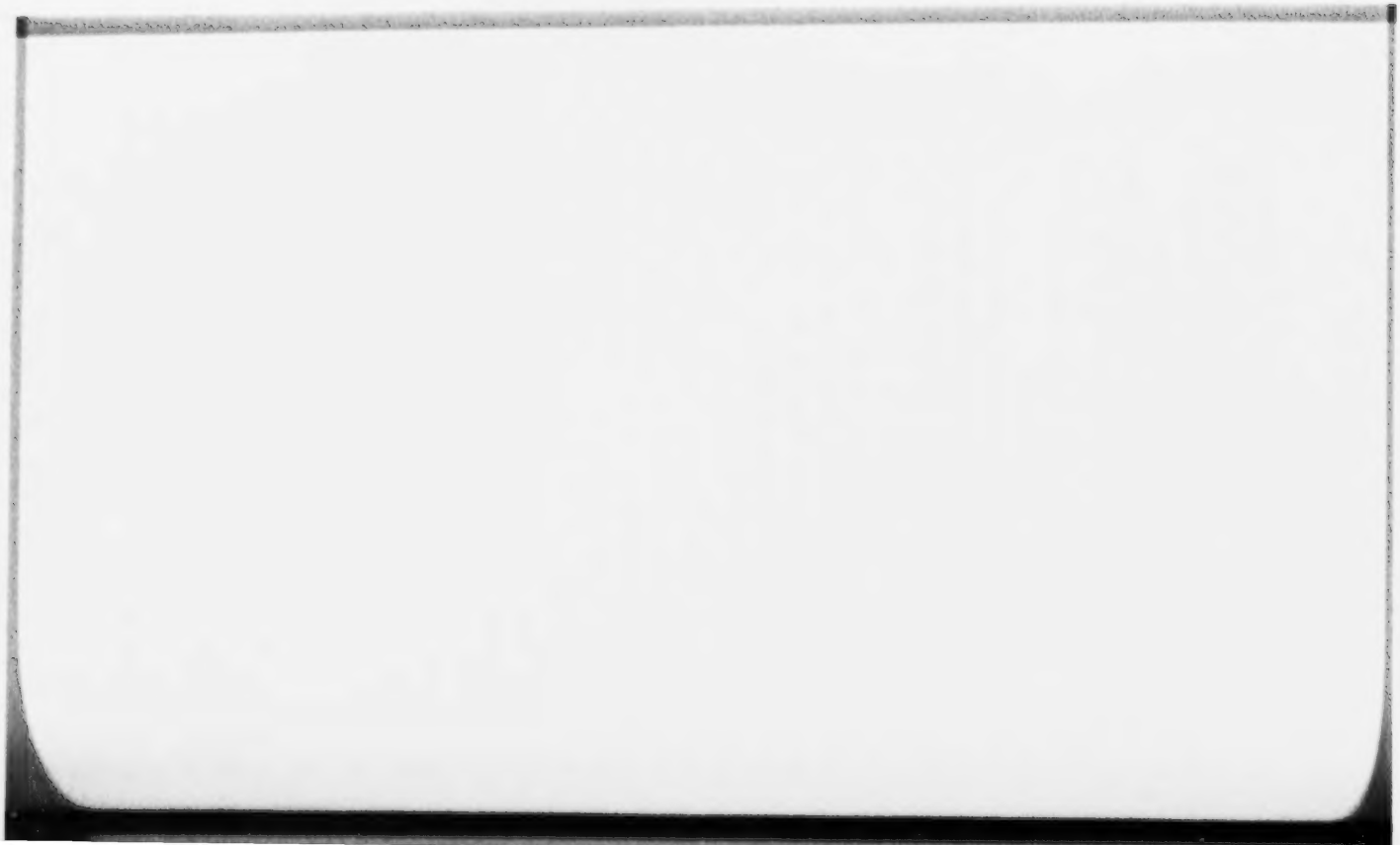
That's the story she told us at that time.

. . . .

Q. Let me first ask you one other question: Who was present during the time she was talking to you?

A. Lieutenant Price, myself, and Mr. Biddy.

(May 26, 1970 evidentiary hearing, Tr. 292-294).



JUL 27 1973

# In the Supreme Court of the United States

OCTOBER TERM

No. 72-1592

CAROLEE BIDDY,
*Petitioner,*

vs.

STATE OF MISSISSIPPI,
*Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

## BRIEF IN OPPOSITION

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# In the Supreme Court of the United States

OCTOBER TERM

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**No.** .....

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CAROLEE BIDDY,
*Petitioner,*

vs.

STATE OF MISSISSIPPI,
*Respondent.*

---

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
MISSISSIPPI

---

## BRIEF IN OPPOSITION

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## OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported as *Biddy* v. *State*, 277 So.2d 115 (Miss. 1973) and is attached hereto as Appendix A.

## JURISDICTION

The jurisdiction requisites are adequately set forth in the Petition.

## QUESTION PRESENTED

The single question posed by petitioner in her application for Writ of Certiorari does not arise under the specific factual circumstances involved in this cause. In conformity with the factual circumstances revealed in the court below, an appropriate redrafting of petitioner's issue would be as follows:

Whether the decision of this Court in *Miranda* v. *Arizona*, 384 U.S. 436, bars from admission into evidence the statements made by a defendant who has twice received the full advisory and signed effective waivers and twelve days thereafter, without invoking the assistance of counsel known to defendant to be available, verbally acknowledges the rights have been previously given and are remembered and understood before making an incriminating statement.

## CONSTITUTIONAL PROVISIONS INVOLVED

The single issue posed by petitioner is clearly within the scope of the constitutional requirements as expressed in *Miranda* v. *Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966), however the issue presented does not warrant expressed or codified judicial interpretation.

## STATEMENT OF THE CASE

The first trial of petitioner for the murder of her five year old retarded stepdaughter, Mona, began on May 24, 1971, and resulted in a mistrial. On August 30, 1971, a

second jury trial was held in the Circuit Court of Jackson County, Mississippi, and on September 5, 1971, petitioner was convicted of the crime of manslaughter and was sentenced to serve a term of twenty years in the state penitentiary. The Mississippi Supreme Court affirmed the conviction and denied a petition for rehearing. (*Biddy* v. *State*, 277 So.2d 115 (Miss. 1973)).

During the first trial on May 26, 1971, an evidentiary hearing was conducted outside the presence of the jury regarding the admissibility under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), of statements made by petitioner on December 27 and 28, 1970, to law enforcement officers. By stipulation the entire proceedings of this evidentiary hearing and "the previous objections made by counsel for the defendant" were made a part of the record of the second trial and defense counsel orally objected "[t]o the admissibility of the statement in its entirety . . ." (R. 53) and, among other things, ". . . we object to each of the acts that were subsequent to the commission of the crime. . . ." The ruling of the trial judge was limited to ". . . the—shall I say voluntariness or meeting the Miranda requirements as to the overall admission of her so-called statement, and I will rule as I did at the previous trial, in the absence of the jury, where I ruled that that is admissible." (R. 54) Reserving his ruling on the other objections, the judge then held, "I will rule that the Miranda requirements have been met, the constitutional requirements have been met, and that the statements are admissible." "I'll overrule the objection as to the subsequent acts. I think they are admissible." (R. 55)

In her motion for a new trial petitioner contended "[t]he Court erred in allowing the statement of the defendant made on December 27, 1970, to be introduced in evidence, in violation of the Fifth, Sixth, and Fourteenth

Amendments to the Constitution of the United States. (Brief for Appellant, pp. 14-25)

On the morning of December 3, 1970, petitioner Carolee Biddy telephoned the Jackson Police Department to report that her mentally retarded five year old stepdaughter, Mona Biddy, was missing. (R. 62) Two officers went to the Biddy home and, after obtaining a description from Mrs. Biddy, began to search the house and immediate vicinity. (R. 70-74) An extensive search was conducted which eventually involved the Jackson Police Department Task Force, Jackson Police Department Officers, the Juvenile Department, approximately three or four hundred National Guardsmen and innumerable citizen volunteers. (R. 120, 130) Five days later, on December 8, Mona Biddy's body was found on the water's edge of the Ross Barnett Reservoir, over thirteen miles from the Biddy home. (R. 147, 294)

Detectives Reeves and Price of the Jackson Police Department conducted the investigation from beginning to end. They first visited the Biddy home on December 4, 1970, and were in close touch with the Biddys during the following weeks. Detective Reeves testified that he talked to petitioner "practically every day" between December 4 and December 15 (R. 278) and went to the Biddy home almost daily, "Most of the time at their request." (R. 301) When Detective Price was asked if Mr. Biddy requested the detectives to talk to him, Price replied, "He requested it several times. He wanted to know what we knew, and I would say that during this period of time he called maybe once every day or every two days to our office, wanting to get in contact with us. Sometimes it'd be two times a day." (R. 341-342)

In a discussion at the Biddy home, Reeves and Price had mentioned an article of clothing which Mona had been

wearing which Mrs. Biddy could not recall. Consequently, the detectives called petitioner on December 15 and "asked her to accompany them to headquarters to identify the article." (R. 279, 339) "She said she'd be glad to come up and look at it, if we would come and pick her up. She didn't have a ride." (R. 279) Upon her request, the detectives called Mr. Biddy and told him what they were going to do; he was at their office when the detectives returned with petitioner. (R. 379-80, 419) After the clothing had been identified Reeves and Price said they would like to talk to each of them about the disappearance; the Biddys agreed and Mrs. Biddy entered a conference room with Reeves, Price, and County Attorney Tom Zebert. (R. 280, 340)

Before she was questioned, Mrs. Biddy was advised of her rights. First, Detective Price read the Miranda warnings from a standard waiver form. (R. 340, 351)

Price asked Mrs. Biddy about her education; she replied that she was a high school graduate and had worked as a secretary for an engineering firm. (R. 340)

County Attorney Tom Zebert described the advisory as follows:

> "And then he [Reeves] said, 'Now we need to talk to you particularly, but before we do, we want to advise you of all your rights, and we will advise you of them and then let you sign a statement to that effect, if you want to.'
>
> So, this is the statement that was read by Detective Price to her, and he read it to her at a fairly slow rate, and after he had read that to her, she made the indication that she did—she said she wanted to sign it that she understood what was being said.

I then took the statement and said to her, 'Mrs. Biddy, we need to make sure that you understand of what this entails, and what it means.'

I told her each one of the rights that are on here separately. For instance, I asked her: (Reading)

'Before we ask you any questions, you must understand your rights. You have the right to remain silent. Do you understand that?' And she said she did. I told her 'Anything you say could be used against you in a court of law,' and she said that she understood that.

And we told her she had a right to talk to a lawyer for advice before you are asked any questions and you can have him with you during questioning and she said she understood that.

She said she understood all of the rights, and I am convinced that she did understand them." (R. 363-364)

Reeves and Price were also convinced that she understood her rights and she voluntarily signed a waiver to that effect at 11:45 a.m. (R. 300, 366) They asked petitioner some questions about Mona's disappearance; she denied any involvement in it. "She became a little emotional and we ceased our questioning." (R. 282)

Later that afternoon, at the Mississippi Highway Patrol, Mrs. Biddy was again advised of her rights by Dewey Williams, Assistant Director of the Bureau of Identification. Mr. Williams asked her to read the Miranda warnings printed on a waiver form, which she did; he then asked if she understood:

A: She said that she understood it, and she knew what her rights were.

Q: She understood and knew what her rights were?
A: Yes sir. She said they previously have [sic] been explained to her. (R. 370)

After assuring Mr. Williams that she knew her rights, Mrs. Biddy signed a second waiver about 3:00 p.m. on December 15. (R. 370, 372) Mr. Williams testified that petitioner appeared normal in every respect. (R. 369)

The Biddys went home. Later that evening, Detectives Reeves and Price went to the Biddy home because they "were asked several times to come out to their home that night and talk to them." (R. 422) Mr. Charles Wright, whom the detectives knew to be a lawyer and a friend of the Biddys, was present although neither Reeves or Price knew whether Mr. Wright had been retained as Mrs. Biddy's lawyer. (R. 284, 308) The following transpired:

> We [Reeves and Price] talked to Mr. Biddy. Mrs. Biddy was in the bedroom, and finally she came out, and Mr. Biddy wanted us to talk to her, and Mr. Wright made the statement "this is not the time and place for that," and we agreed, and we left. (R. 284)

On the following night, December 16, a stabbing incident was reported at the Biddy home. The Biddys specifically requested the presence of Detectives Reeves and Price. Reeves testified as follows:

> After I had gotten off duty and I had gone home, sometime before midnight, I received a call from the Biddy home that Mrs. Biddy had been attacked, and they wanted me out there right away.
>
> I advised that some other officers would probably be there, and they said they wanted me. So, I called Lieutenant Price at home . . . and we went out there. (Tr. 284)

Mrs. Biddy had slight wounds on her hip allegedly inflicted by an unknown attacker in her back yard. Reeves and Price, along with the two assigned detectives, conducted an investigation and concluded that Mrs. Biddy's story was "illogical." (R. 285) Mrs. Biddy admitted on December 27 that she staged the incident. (R. 291)

At 11:35 p.m. on December 27, Mrs. Biddy again called the police station, this time to report that her 2½ year old daughter, Candice, had been abducted. (R. 285)

Detective Reeves was requested by the Biddys to come out to the house, although he was off duty at the time. (R. 285) He and two other detectives investigated Mrs. Biddy's story: "She said someone came in the window, came by Mr. Biddy [allegedly asleep on a couch in the same room], went in and got Candice, and went back out the window, tying up the dog, and putting him into the closet." (R. 286) The child was found near a ditch several years behind the house. The temperature was 26° F (R. 269, 271); the baby's diaper was found in the ditch, frozen. (R. 274) Candice was taken to a doctor for examination by a detective and Mr. and Mrs. Biddy. (R. 271) The detective found no evidence to bear out the story; Mrs. Biddy later admitted that she had also staged this incident. (R. 291)

While Reeves was at the Biddy home on December 26, he was told that Mr. and Mrs. Biddy were going to Georgia the next day to the home of Mr. Biddy's father. (R. 288) He asked Mr. Biddy to notify him before they left town.

> All during the investigation we had talked to Mr. and Mrs. Biddy, and we told Mr. Biddy that any time that we found any facts about that case that he should know, we would . . . tell him about it.

> Several things had been brought to our attention that we thought he ought to know, he wanted to know. (R. 288)

Mr. Biddy said he would call before leaving. (R. 288)

Early on the morning of December 27, Detectives Reeves and Price went to the Biddy home and searched the back yard for evidence of Candice's abduction; finding none, they left. (R. 288) Around midmorning, they returned to the Biddy home and talked to Mr. Biddy. "We told him we had something we'd like to talk to him about before he left for Georgia. He advised he'd call us before they left. He wasn't sure when he was going to leave at that time." (R. 309) On that same morning, the officers were in their car talking to another man when Mal Sims, Mr. Biddy's business partner, "came over and met us." (R. 309) They talked to him ". . . to get his opinion of what was going on. He knew the family more—much better than we did." (R. 310) Reeves had no recollection of saying anything about Mrs. Biddy needing psychiatric help (R. 310) or the possibility of committing her:

> Q: And there was no mention in your presence, by either you or Mr. Price, of Mr. Biddy . . . either committing her, or that you were going to have to call his father and get it done?
> A: No, sir. (R. 310)

Reeves said that he called Mr. Biddy's father because "Mr. Sims told me that Mr. Biddy's father had called him, and wanted to talk to me, and I told him that I'd be glad to talk to him later, and I did call him later." (R. 310) He returned the call "to find out what he [Biddy's father] wanted" and because ". . . he was looking for them [Mr. and Mrs. Biddy] over in Georgia, and we told him that we were going to talk to him that morning, and they might

be late coming over there." (R. 311) When asked by petitioner's attorney whether he mentioned that Mrs. Biddy had mental problems which required treatment, Reeves replied, "I don't remember saying that, and I don't see why I would say it, because I didn't believe that at the time." (R. 312) He knew she had received shock treatments over a year before, but the psychiatrist had told the officers ". . . that she had passed the test, and as far as he was concerned, she was sound." (R. 313)

About 11:00 a.m., Reeves and Price received a call from Mr. Biddy, ". . . saying they were ready to go, and that he would like to talk to us." (R. 289) Mr. Biddy requested that the officers come to his home.

> "We went out and told him that we had several things that we would like to talk to him about and tell him, and asked him would he like to go down to police headquarters, he and Mrs. Biddy, before he left town, and he said, 'if you have something to tell me, I'll be glad to go.'
>
> He said 'let me talk to my wife.' They conferred in the back room and came back out and said 'we'd like to go down.' They left in their car and drove to the police station." (R. 289)

Detective Price testified as follows about the purpose of the visit to the Biddy home: "He [Biddy] wanted to meet us out there . . . He wanted to know what we had found out, and what we knew." (R. 352) When asked why the officers asked the Biddys to go to police headquarters, he replied, ". . . we just have a policy we rather talk to people . . . headquarters, if we can," and that the Biddys "both agreed" to the request. (R. 343)

Before leaving, Mr. and Mrs. Biddy walked over to Mal Sims and asked him to call the firm's attorney, Mr.

Charles Wright. (R. 391) The following exchange between petitioner's attorney and Detective Reeves reveals a conflict between Reeves' testimony and Mr. Biddy's testimony that he informed the officers that he had contacted an attorney and did not want Mrs. Biddy questioned until he arrived.

> Q: Did you know about . . . the request at that time that their family lawyer come down there to see them?
> A: I don't know now where I got the information . . . I don't know whether Mr. Price heard it, or whether I heard it, but that Mr. Mal Sims was going to call tgeir [sic] lawyer for them.
> Q: To have the family lawyer there when you got to the police station?
> A: No. He just said he was going to call one. He didn't say when he'd be there, or did they want to see him that day or the next day. They said he had called—
> Q: But you knew he was coming down there, did you not?
> A: I didn't know when. In fact, all I knew was that Mr. Sims was going to call a lawyer. That's the extent of my information.
> Q: And the purpose of calling a lawyer was to have him there at the police station, was it not?
> A: I don't know the purpose. No one told me the purpose. (R. 316)

Both Reeves and Price testified that Mr. Biddy requested only that he be present when Mrs. Biddy was questioned; the officers agreed. (R. 289, 344)

The Biddys were then taken to separate conference rooms; the detectives talked first to Mr. Biddy. They informed him of the results of their investigation so far:

that Mrs. Biddy did not receive clothing in exchange for modeling for a local dress shop, that they had found no evidence supporting her story that she regularly attended a health club, and that they believed she staged the stabbing and abduction incidents. He agreed with them about the two staged incidents. (R. 290) Reeves testified that Roy Dunn, Mrs. Biddy's ex-husband, may have been mentioned; however, he could not recall what, if anything was said about him. (R. 320) Price was also unsure of what was said about Dunn: "Right now I don't recall what was said about Mr. Dunn, other than that he had been questioned in the case, and possibly, that he was calling out at the house regularly, checking on the children [of Dunn and Mrs. Biddy]." (R. 353) When asked why they gave Mr. Biddy all this information, Reeves and Price gave no indication that they wanted to use him as their agent; rather, they consistently replied that Mr. Biddy had requested complete information throughout the case.

> Q: Why did you want to tell him these things?
> A: He has asked us many times that if we found out anything that he should know, to let him know. (R. 317)
>
> * * *
>
> Q: What was the purpose of telling him that?
> A: He wanted to know everything that we had found out in this case, and we wanted to tell him what we thought he should know. (R. 353-354)

Under close questioning by petitioner's attorney, neither Reeves nor Price indicated that they sought to use Mr. Biddy as an agent to extract a confession from his wife. (R. 318, 355)

> Q: Did you think he would talk with Mrs. Biddy then?

A: I thought it was important to the investigation that he knew that some of these things that Mrs. Biddy had been telling him were false.

Q: Because it would help you in getting him to talk with her?

A: We never asked him to talk to her. He asked to talk to her. (R. 318)

Since the officers also wanted to talk to Mrs. Biddy, and Mr. Biddy had requested that he be present when they talked to her, they asked her to come into the room where they all were. The following statements by Reeves explain the officers' presence during the conversation between Mr. and Mrs. Biddy:

"He said 'I'd like to talk to my wife,' and we brought her over to the room that he was in. He said nothing about talking to her alone. (R. 329)

If he had asked us to leave him alone, we would have left him alone. (R. 329) We might have asked him would it be all right for us to be represented. I know we did stay, and if he said that he wanted to talk to her alone, we would have left. (R. 329)

He accepted what we said, and he said he believed it, and he'd like to talk to his wife." (R. 329)

Mr. Biddy began to talk to his wife, but before very much was said, the phone rang and Reeves was informed that Mr. Wright was downstairs:

"I immediately went downstairs and met Mr. Wright, and brought him up to third floor, and he said he'd like to talk to Mr. Biddy. I went into the room and told Mr. Biddy, went in and got Mr. Biddy and took him out to Mr. Wright and they conferred.

> While they were gone, Lieutenant Price and I were in the room with Mrs. Biddy, and I told her that we would like to ask her some questions, and I said 'Do you understand your rights? You have been advised of your rights before' and she said, 'Yes, she understood them.'" (R. 291)

No questions had been asked by the officers before Wright arrived. (R. 323) The officers did not prevent Mrs. Biddy from talking to Mr. Wright (R. 346); she made no attempt to do so, although he stood in the door for a few minutes after talking to Mr. Biddy. (R. 291)

> Q: Was Mrs. Biddy aware of the fact that Mr. Wright was there?
> A: He came to the door, and the door was open. She was sitting right by the door. They did not talk, but he talked to Mr. Biddy. (R. 291)

Mr. Wright told Detective Reeves that . . . "he was not going to get involved in the case . . . he was friends of the family, and he didn't want to get involved." (R. 325) Although Mr. Biddy testified that he told Charles Wright that he needed someone to protect Mrs. Biddy's rights (R. 398), he then returned to the room and continued questioning her while Reeves was out of the room conferring with Wright:

> At that time Mr. Biddy came back, and I went out and conferred with Mr. Wright for a short time. He told me that he was ill, and he was going home, and that Mr. Poole would come up to the office later.
>
> I went back into the room—and he left. I went back into the room with Mr. and Mrs. Biddy, and *at that time Mr. Biddy was questioning Mrs. Biddy* about four different instances. (R. 431) (Emphasis added)

Detective Reeves' *full* answer to the question whether he knew another lawyer was "on his way up" is as follows: "Yes, sir. I knew he was trying to get another lawyer, was going to try to get you [John Poole], or said he was, and also Mr. and Mrs. Biddy knew that there was a lawyer coming, too." (R. 325)

Mr. Biddy questioned Mrs. Biddy about the four incidents the officers had mentioned, and she admitted ". . . that she had not worked for the clothing store, . . . not having gone to the health studio as regularly as she had claimed . . . that she had faked the stabbing, and had faked the abduction." (R. 291) "At this time, Mr. Biddy became very emotionally upset," but Mrs. Biddy was only " a little emotional, not very much . . . like she wanted to tell him something." (R. 291-292)

Then Detective Reeves questioned petitioner for the first time:

> "At this time I told her 'Mrs. Biddy, now is a good time to tell Mr. Biddy if you were involved in the disappearance of Mona.' I told her that Mona was gone, she wouldn't—couldn't come back, and that she [Mona] was afflicted, that the doctors had told us she [Mona] would never get any better, and that now would be a good time to talk to her husband.
>
> "They were sitting facing each other, holding hands. She looked straight at Mr. Biddy, and said 'Ted, I am sorry I did it.' She said 'Ted, I didn't mean to do it.'" (R. 292)

Mrs. Biddy then told the officers that she found Mona dead, panicked, and took the child's body to the reservoir. (R. 292-294, 345-346)

Detective Reeves, after waiting a few minutes because petitioner had become "a little bit emotional" after mak-

ing her statement, asked her "if she would mind" him taking her statement in writing. (R. 294) She agreed, and Reeves requested that Mr. Biddy read her the rights listed on the paper upon which he was to type the statement:

> "I said, 'now, I want you to be sure that you understand what type of paper I'm going to type it on. This is the list of rights you have been advised of before. I would like for Mr. Biddy to read them to you again, so you'll know again what it is all about.'
>
> Mr. Biddy took a sheet like this, and he read each right to her, and the waiver, and she began telling the story again, and I started typing it. (R. 295)
>
> Q: Did you know why you needed to read rights to her again since a lawyer was already on his way up there?
>
> A: The reason—she had already stated she understood her rights, but I was going to type it on this piece of paper, and these rights were right above it, and I wanted him to read it so she would know what I was typing was on the same sheet of paper with her rights. Now, as far as her understanding her rights, we were convinced she did, but we wanted him to read them." (R. 334)

Shortly after Reeves began typing, he received a call that John Poole was downstairs. Reeves immediately went downstairs to talk to him, brought him upstairs, and called Mr. and Mrs. Biddy out; the three of them conferred privately in another room. (R. 295) When Mr. Poole informed the officers that he did not want petitioner to sign any statements, Reeves immediately took her partial statement out of the typewriter. (R. 296) Mr. Poole soon left, telling petitioner he would see her the next day. (R. 296) Reeves conferred with Chief of Police Tullos and then arrested Mrs. Biddy for the murder of Mona Biddy. (R. 458-459)

Both Reeves and Price testified that they had neither prevented Mrs. Biddy from talking to Charles Wright or John Poole nor prevented those attorneys from talking to her. (R. 296, 346-347) At no time on December 27 did Mrs. Biddy tell the officers that she did not want to talk to them any more. (R. 338, 348) Both detectives repeatedly denied saying anything to Mr. Biddy about putting petitioner in a hospital or having treatments. (R. 322, 356-357) Reeves denied saying anything about being under pressure to settle ugly rumors or clear the case up. (R. 331) Nor did Reeves try to encourage her to say she killed Mona accidentally or make promises about not bringing charges.

> Q: Did you state that you believed it to be an accident?
> A: No sir. I may have said if it was an accident, and if something did happen, tell about that. I told her to tell just whatever happened, no matter what it was; whether it was an accident, whether she was involved in—
> Q: And you told her that if it was an accident, there would be no charge?
> A: No sir, I didn't say that.
> Q: Do you deny saying that?
> A: I didn't say it, no sir.
> Q: Did Mr. Price say this?
> A: I don't remember him saying it.
> Q: Could he have stated it?
> A: I don't see why he would. I didn't hear him say it. (R. 332)

Under cross-examination by John Poole, Reeves said twice that he did not remember Poole telling him that he did not want Mrs. Biddy to talk with the officers any further. (R. 333)

Before Mr. Poole arrived, the officers had asked petitioner if she would go out to the Ross Barnett Reservoir and point out the spot where she had left Mona's body; "she said she'd be glad to." (R. 296) He told her they would do it the next day, and she agreed. On the morning of December 28, Reeves told her at least twice that she was not required to go:

> "I went up to the jail and talked to Mrs. Biddy, and asked her if she still wanted to take us out to the reservoir, and she said 'yes,' that she had told us the truth, and she wanted to get it all straight.
>
> So, we [Reeves and Price], we took her from the jail, and got . . . the lady from the juvenile office, Nancy, and we went downstairs to get in the car, and again I told her, said 'Mrs. Biddy, you don't have to go out there if you don't want to,' and she said 'I want to go. I want to get it all straightened out.'
>
> So we got in the car, and we drove down Jefferson Street to I-55. As we got out near a road to turn off to go to the road across the dam, we told her 'from this point on, we'd like for you to tell us every place to turn. We're not going any place except where you tell us.'
>
> So she directed us from there on." (R. 297)

Petitioner directed them to the place where the body had been found and gave detailed instructions about her route there and even the wrong turns she had taken. (R. 298) Both Detective Price and Juvenile Officer Nancy McAleer heard Reeves tell Mrs. Biddy that she didn't have to go to the reservoir and heard her answer that she wanted to get everything straightened out. (R. 347, 376) Nancy McAleer testified, "They told her twice to

my recollection, that she didn't have to go." (R. 379) Both also confirmed the fact that Mrs. Biddy voluntarily directed the driver to the spot and that all directions were given by her. (R. 347, 376-377) During the ride back, the officers asked petitioner to review what she had told them earlier, which she did. (R. 378)

The officers took Mrs. Biddy back to the police station rather than to the jail, because they knew Mr. Poole was coming to see her sometime that morning. They waited for him at the police station. (R. 299) Petitioner asked Reeves . . . "why she had to stay in jail overnight, after she had obtained a lawyer," and Reeves explained. (R. 326)

> "And we conversed a little bit. She had previously mentioned something that had happened in jail, something that was funny. We were just, more or less, making conversation, and she said something else about you, and I said 'he is a fine lawyer,' and jokingly, without any malice, I said 'the last case I was on where Mr. Poole was the defense attorney, his client got forty-five years.' "
> Q: All right. Then, this was a joke, I believe you said?
> A: That's the way I meant it, and that's the way she took it, because we talked about it, and I again assured her that you were a fine lawyer, and that's the truth. (R. 326)

During the same conversation, petitioner and Reeves further discussed her attorney in the following manner:

> Q: Did you state anything to the effect that I wasn't interested in her, that I was interested only in a football game?

A: No sir, not in that context . . . Not in that way, no sir. I might have mentioned about you being there and that you left to go watch a football game, but not in those words, no sir.

Q: Do you know why you mentioned it?

A: I don't know. She and I were just talking. She probably brought it up, I'm not sure. (R. 328)

Nancy McAleer confirmed Reeves' testimony: ". . . she said something about why you didn't spend more time talking to her, and he said that you had said that you were watching the ballgame, something like that." (R. 380) This entire conversation took place one day after Mrs. Biddy had made her statement and also after she had pointed out the location of the body. (R. 379-380)

The officers and Mrs. Biddy then returned to the police station and shortly thereafter Mr. Poole came to the station to talk to her. (R. 299)

On the basis of this testimony the trial judge ruled:

I'll overrule the motion [to suppress] for the reason that under the testimony of Mr. Biddy, that throughout Mrs. Biddy had the advice of their family counsel, and even on the day of the alleged statement, he appeared at the door, spoke to Mr. Biddy.

In other words, in my opinion, throughout she had been advised of her constitutional rights, she signed a waiver, not just one time but on several instances, and I am of the opinion that the statement is admissible.

And as to the other point that you raised, I am also of the opinion that the two so-called hoaxes are admissible in this case. (R. 414)

## REASONS FOR DENYING THE WRIT

No question of substance is presented by petitioner's assertion that she was denied her constitutional rights when the trial court admitted into evidence her statement which was immediately preceded by her verbal acknowledgement that she remembered and understood the rights which had been explained to her in full on two occasions twelve days before at which times she signed waivers, the validity of which is unchallenged.

Furthermore, petitioner's assertion that the officers induced incriminating statements after an attorney who had been obtained for petitioner by her husband left the police station due to illness and before the arrival of a second attorney known by the officers to be on his way to see petitioner is simply not supported by the record.

On the contrary, the record clearly shows that counsel for petitioner did appear at the police station and spoke to petitioner's husband and one of the officers and even stood in the open doorway of the interrogation room where petitioner was seated but at no time nor in any manner did she or her husband who was present the entire time express or even indicate a desire to have an attorney present during the questioning.

## ARGUMENT IN SUPPORT OF JUDGMENT AND IN ANSWER TO PETITIONER

WHETHER THE DECISION OF THIS COURT IN *MIRANDA V. ARIZONA,* 384 U.S. 436, BARS FROM ADMISSION INTO EVIDENCE THE STATEMENTS MADE BY A DEFENDANT WHO HAS TWICE RECEIVED THE FULL ADVISORY AND SIGNED EFFECTIVE WAIVERS AND TWELVE DAYS THEREAFTER, WITHOUT INVOKING THE ASSISTANCE OF COUNSEL KNOWN TO DEFENDANT TO BE AVAILABLE, VERBALLY ACKNOWLEDGES THE RIGHTS HAVE BEEN PREVIOUSLY GIVEN AND ARE REMEMBERED AND UNDERSTOOD BEFORE MAKING AN INCRIMINATING STATEMENT.

In reaching the decision in *Miranda* v. *Arizona,* 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966), four cases having common features were considered. "In each, the defendant was questioned (by law enforcement officials) in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process . . . [t]hey all thus share salient features—incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." 384 U.S. at 445.

Against this backdrop, *Miranda* sought to guarantee that "the constitutional rights of the individual could be enforced against overzealous police practices." 384 U.S. at 444. The multiple issues arising from the decision, generally speaking, may be divided into two categories; the first is whether *Miranda* requirements are applicable to the particular case, and the second is whether the *Mi-*

*randa* requirements have been met in cases where they are applicable as indeed they are here. To be considered under this general issue are the questions of whether the warnings were adequate, whether waiver of rights is clearly demonstrated and whether the suspect was competent to waive. Respondent believes each question is answered in the affirmative here.

On December 15, petitioner, age 32 years and a high school graduate with a record of employment as a secretary with an engineering firm, was given the full *Miranda* advisory. After each of the rights was read to her she was given an opportunity to ask any questions she wished about them. She said she understood and signed a waiver. (R. 300, 306, 340) That same afternoon she was again informed of her rights and stated she knew and understood them as they had previously been explained to her. A second waiver was signed. (R. 368-371)

Twelve days later, on December 27, petitioner and her husband and Detectives Reeves and Price were seated in a conference room at the police station when Reeves received a telephone call that Wright was downstairs and wished to speak to Ted Biddy who then stepped outside the room to confer with him. (R. 290) Detective Reeves testified:

> "While they were gone, Lieutenant Price and I were in the room with Mrs. Biddy, and I told her we would like to ask her some questions, and I said 'do you understand your rights? You have been advised of your rights before.' And she said yes, she understood them." (R. 290, 291)

"At that time, Mr. Biddy and Mr. Wright came back. Mr. Biddy came into the room, Mr. Wright stood at the door [appellant was seated right by the door]. He had

told me previously that he was ill, and would have to go home. So, he left." (R. 291) Wright said he would get another lawyer, Mr. Poole, to come up there for him. (R. 325)

> At that time, Mr. Biddy began to talk to Mrs. Biddy, and asking her about these different instances, about the clothing store, about the health studio, about the stabbing and the kidnapping.
>
> She admitted that she had not worked for the clothing store, and she partially admitted not having gone to the health studio as regularly as she had claimed to be going.
>
> She admitted that she had faked the stabbing, and had faked the kidnapping. (R. 291)

At this point, Reeves told appellant now was a good time to tell Mr. Biddy if she was involved in Mona's disappearance and that Mona was gone and couldn't come back, that she was afflicted, that the doctors said she would never never get any better, "that now would be a good time to talk to her husband."

> They were sitting facing each other, holding hands. She looked straight at Mr. Biddy, and said "Ted, I'm sorry I did it." She said, "Ted, I didn't mean to do it." (R. 292)

Lt. Reeves then asked if she would mind his taking the statement in writing.

> She said "I told you the truth. Is there any reason for that?" I said "Well, we would like to have a record of it." She said "Well, I told you", and I told her that if something should happen to me, or Mr. Price, we would like this for our files, and she said "all right".

> I said "now, I want you to be sure that you understand what type of paper I'm going to type it on. This is the list of rights that you have been advised of before. I would like for Mr. Biddy to read them to you again, so you'll know again what it is all about."
>
> Mr. Biddy took a sheet like this, and he read each right to her, and the waiver, and then she began telling the story again, and I started typing it. I typed two or three lines, and the phone rang and my office told me that Mr. Poole was downstairs. (R. 295)

Lt. Reeves talked to Mr. Poole who then had a conference with appellant and her husband. Poole said he did not "want her signing any statements." "I immediately took the statement out of the typewriter, and put it down. Mr. Poole told her he would see her the next day, and he left shortly after that." (R. 296)

It is undisputed that the two advisorys and waivers given on December 15 comported with the *Miranda* mandate. Thus, the issue here is whether, after full warnings are administered at an initial interrogation session, it is necessary to repeat the warnings prior to each subsequent session. The general rule is that warnings need not be repeated. *Miller* v. *United States*, 396 F.2d 492 (8th Cir. 1968), cert. denied 393 U.S. 1031; *Tucker* v. *United States*, 375 F.2d 365 (8th Cir. 1967), cert. denied 389 U.S. 888 (1967). This same rule has been applied to instances when the sessions are days apart. *Maguire* v. *United States*, 396 F.2d 327 (9th Cir. 1968), cert. denied 393 U.S. 1099 (1969) [warnings three days earlier held sufficient]; *State* v. *Magee*, 52 N.J. 352, 245 A.2d 339 (1968) [warnings 2-1/2 days earlier held sufficient]; *People* v. *Long*, 69 Cal. Rptr. 698 (1968) [warnings 18 hours earlier held sufficient]. Failure of the police to repeat the Miranda warning prior to the taking of de-

fendant's third and fourth "in custody" statements was assigned as error in *State* v. *Rowe*, 468 P.2d 1000 (Wash. 1970):

> Defendant was properly informed of his rights at the time of his arrest and again before giving his first and second written statements. Miranda does not require the police to make repeated recitations of a defendant's constitutional rights before the taking of each subsequent statement. State v. Blanchey, 75 Wash. Dec. 2d 935, 454 P.2d 841 (1969); State v. Lucia, 74 Wash. 2d 819, 447 P.2d 606 (1968). Having been informed of his rights three times and having intelligently waived them, statements taken within the next 48 hours cannot be said to have been made without knowledge of his rights.

Apparently these decisions spring from the rationale of *People* v. *Hill*, 39 Ill.2d 125, 233 N.E.2d 367 (1968):

> To adopt an automatic second-warning system would be to add a perfunctory ritual to police procedures rather than providing the meaningful set of procedural safeguards envisioned by Miranda. Gorman v. United States, 380 F.2d 158, 164 (1st Cir.).

Adverting to the issue of waiver, petitioner urges that the State failed to sustain the heavy burden, imposed by *Miranda*, of demonstrating that at the time the incriminating statement was given, "the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retain an appointed counsel." *Miranda* at 475, 86 S.Ct. at 1628. In *United States* v. *Hayes*, 385 F.2d 375 (4th Cir. 1967), cert. denied 370 U.S. 1006, 20 L.Ed.2d 106, 88 S.Ct. 1250 (1968), it was held:

> In reiterating the strong presumption against waiver and the high standards of proof needed to overcome

this presumption, the Court in Miranda relied upon Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), in which the Court unequivocally stated:

> The determination of whether here has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Johnson v. Zerbst, supra, 304 U.S. at 464, 58 S.Ct. at 1023. Similarly, in a post-Miranda decision, the Fifth Circuit observed:

> "* * * the cases in which it is clear that the warnings have been given must be considered on their own facts in order to determine the question of waiver. The courts must do this on an ad hoc basis, since no per se rule has thus far been adopted dealing with this problem."

To the same effect is the ruling in a more recent case, *United States* v. *Hilliker*, 436 F.2d 101 (9th Cir. 1970), cert. denied 401 U.S. 958, 28 L.Ed.2d 242, 91 S.Ct. 987 (1971).

> Determining the validity of a waiver of Miranda rights is a difficult but necessary judicial task. Over-willingness to find that there was a valid waiver could subvert the goals of the Miranda decision. Yet the imposing of too stringent a standard for finding waiver could hamper law enforcement more than is reasonably required to protect individual constitutional rights. See Comment, 36 U.Chi.L.Rev. 413 (1969). Courts must determine the validity of a waiver of Miranda rights on an ad hoc basis looking carefully to the particular circumstances of the case.

Cf. *Narro* v. *United States*, 370 F.2d 329 (5th Cir. 1966), cert. denied 387 U.S. 946, 18 L.Ed.2d 1334, 87 S.Ct. 2081 (1967) and *Pettyjohn* v. *United States*, 419 F.2d 651 (D.C. Cir. 1969), cert. denied 397 U.S. 1058, 25 L.Ed.2d 676, 90 S.Ct. 1383 (1970).

That counsel can be waived as well as demanded is undisputed. Furthermore, as stated in *State* v. *Ruiz*, 251 Ore. 193, 444 P.2d 32, 33 (1968), "after the warnings are given and knowingly and understandingly understood by the suspect, the burden is upon the suspect to invoke his known rights." Where, as here, two waivers are signed and subsequently a verbal affirmation that the previously given admonitions are known and understood, there can be no doubt that waiver has unequivocally been demonstrated. Certainly it is also deserving of emphasis that at no time did appellant, her husband (who was present throughout the entire first statement) nor her attorney (who was also present and aware that petitioner was seated in the interrogation room with the investigating officers) ever indicate in any manner a desire to have the interrogation be delayed or ceased until an attorney was present. At this point, it should be emphasized that petitioner's claim that the officers attempted to utilize her husband as their agent is totally without merit and completely unsupported by the record.

As stated in *Jennings* v. *United States*, 391 F.2d 512, 515 (5th Cir. 1968), cert. denied 393 U.S. 868, 21 L.Ed.2d 136, 89 S.Ct. 154 (1968):

> "[W]hat the Court sought to interdict in Miranda were those situations in which a person has indicated his desire to exercise his constitutional right of silence but the police refuse to take 'no' for an answer."

Certainly this is not a case where the police refused to take "no" for an answer. Conversely, what is presented are circumstances wherein the officers fully complied with the basic thrust of *Miranda* which is to equalize the parties in the interrogation room and give the suspect the opportunity to call a halt to the questioning. The case at bar evidences none of the "overzealous police practices" criticized in *Miranda* but rather presents a picture in which the officers, throughout the entire investigation, scrupulously insured the fact that petitioner was afforded every constitutional protection due her.

Nor were the requirements of *Miranda* subverted in any way when, on the day following her arrest and after being repeatedly instructed that she did not have to do so, she accompanied the officers to the reservoir. It is on this point that *Miranda* is most explicit:

> Volunteered statements *of any kind* are not barred by the Fifth Amendment and their admissibility is not affected by our holding today. 384 U.S. at 478

Detective Reeves testified:

> I went up to the jail and talked to Mrs. Biddy, and asked her if she still wanted to take us out to the reservoir, and she said "yes," that she had told us the truth, and she wanted to get it all straight.
>
> So, we [Reeves and Price], we took her from the jail, and got . . . the lady from the juvenile office, Nancy, and we went downstairs to get in the car, and again I told her, said "Mrs. Biddy, you don't have to go out there if you don't want to," and she said "I want to go. I want to get it all straightened out." (R. 297)

The volunteered statement is admissible regardless of whether it was made while in custody, after indictment or after counsel was retained. *Spurlin* v. *State,* 218 So.2d 876 (Miss. 1969) [in custody]; *Mobley* v. *State,* 161 S.E.2d 834 (Ga. 1968) [in custody and after conferring with his lawyer]; *State* v. *McKnight,* 243 A.2d 240 (N.J. 1968) [in custody; counsel assigned by court but had not seen defendant]; *Commonwealth* v. *Franklin,* 265 A.2d 36 (Pa. 1970) [in custody and after counsel was requested]; *People* v. *Kaye,* 250 N.E.2d 329 (N.Y. 1969) [in custody and represented by counsel who was not present when statement was volunteered.]

Finally, as noted in *Boulden* v. *Holman,* 394 U.S. 478, 22 L.Ed.2d 433, 89 S.Ct. 1138 (1969), "[t]he question whether a confession was voluntarily made necessarily turns on the 'totality of the circumstances' in any particular case." 394 U.S. at 487. See also: *Clewis* v. *Texas,* 386 U.S. 707, 18 L.Ed.2d 423, 87 S.Ct. 1338 (1967); *Greenwald* v. *Wisconsin,* 390 U.S. 519, 20 L.Ed.2d 77, 88 S.Ct. 1152 (1968); *Darwin* v. *Connecticut,* 391 U.S. 346, 20 L.Ed.2d 630, 88 S.Ct. 1488 (1968); *Frazier* v. *Cupp,* 394 U.S. 731, 22 L.Ed.2d 684, 89 S.Ct. 1420 (1969).

Upon a consideration of the circumstances attendant the making of the subject statements, the trial court determined that the defendant knowingly, intelligently and voluntarily waived his constitutional rights after having received the appropriate warnings. The trial judge, on the whole record, found the confession to be voluntary; the Mississippi Supreme Court found no error and accepted the determination of the lower court that the record did not disclose the constitutional rights of the defendant had been violated or infringed upon in any manner.

## CONCLUSION

Respondent respectfully submits that the petitioner was very much aware of her constitutional rights which she elected to waive before making her statement. The petitioner's circumstances pose no question of particular moment or indecision in the case law of the land and it is therefore respectfully submitted that the petition for Writ of Certiorari should in all justice be denied as being without merit.

Respectfully submitted,

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Special Assistant Attorney General

## CERTIFICATE

I, Karen Gilfoy, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing Brief In Opposition to Petition For A Writ of Certiorari to the Supreme Court of Mississippi to F. Lee Bailey, Esquire, Mark J. Kadish, Esquire, and John R. Truman, Esquire, One Center Plaza, Boston, Massachusetts.

This, the 20th day of July, A. D., 1973.

KAREN GILFOY
Special Assistant Attorney General

## APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 47,095

NO. 47,100

MRS. CAROLEE BIDDY

V.

STATE OF MISSISSIPPI

ROBERTSON, JUSTICE:

Mrs. Carolee Biddy was indicted by the Hinds County Circuit Court Grand Jury for the murder of her 6-year-old stepdaughter, Mona Biddy. A change of venue was granted to the Circuit Court of Jackson County, where appellant was tried for murder, but convicted of manslaughter by a Jackson County Petit Jury. She was sentenced to serve a term of 20 years in the State Penitentiary.

About 7:55 A.M. on December 3, 1970, appellant called the Jackson Police Department to report the disappearance of Mona Biddy, her mentally retarded stepdaughter. A massive search was conducted by the Jackson Police Department, law enforcement officers of Hinds and Rankin Counties, three or four hundred National Guardsmen, and many civilians and students.

On December 8th, five days after her reported disappearance, Mona's body was found by two fishermen in a cove on the Rankin County side of the Barnett Reservoir. Her body was at the water's edge and water from time to time would lap over it.

The first assignment of error was that the corpus delicti was not proven to the exclusion of every reasonable theory consistent with innocence.

The corpus delicti in a homicide case consists of two fundamental facts: (1) The fact of the death of the deceased, and (2) The fact of the existence of a criminal agency as the cause of death. Pitts v. State, 43 Miss. 472 (1870). Both facts of the corpus delicti may be proved by circumstantial evidence. Perkins v. State, 160 Miss. 720, 135 So. 357 (1931).

On the afternoon of December 8, 1970, immediately after the body had been found, Dr. Forrest Bratley, a skilled and experienced pathologist, performed a complete autopsy on Mona's body at the University Medical Center in Jackson. His detailed written findings (a part of the record) ended with Dr. Bratley's positive opinion that the most probable cause of death was suffocation. The report also stated:

> "The complete postmortem examination does not reveal any natural cause of death nor is there any evidence of any traumatic injuries which could have caused death. The toxicological examination does not reveal the presence of any poison in the blood or stomach contents."

On June 24, 1971, Mona Biddy's body was exhumed, and a second autopsy performed by Dr. Forrest Bratley in conjunction with Dr. Donald Dore, Jr., the pathologist at the Singing River Hospital in Pascagoula, Mississippi. This autopsy was performed at Barrytown, Alabama, where the child had been buried.

This second autopsy was performed for the express purpose of determining whether Mona had swallowed any Liquid Plumr prior to her death. No signs or indications of any kind were found that the child had swallowed any caustic or corrosive substance. After a very detailed and thorough examination on the witness stand, Dr. Bratley

stated that in his opinion death was caused by suffocation and that this suffocation was by external application of force by someone stronger than the child. Dr. Bratley never wavered in his opinion as to the cause of death, even though he was extensively cross-examined as to other possible causes of death and the fact that findings of death by suffocation are similar to findings of death from heart disease, shock, laryngeal spasm, bronchial spasm, respiratory arrest and cardiac arrest. From his knowledge gained from personally performing the first and second autopsies, he clearly and decisively negatived any other cause of death. On the second autopsy, he and Dr. Donald Dore found no evidence whatsoever of Liquid Plumr or other caustic or corrosive substance in Mona's digestive tract or vital organs. If Mona had had laryngeal spasm it would have had to have been caused by drinking Liquid Plumr or other caustic substance.

Dr. Howard Nichols, a skilled and experienced pediatrician of Jackson, who had been Mona's doctor for the first 1½ years of her life, after a detailed study of both autopsy reports testified that it was his considered opinion that the probable cause of death was suffocation due to external pressure over her nose and mouth. He further testified that it was his opinion that Liquid Plumr was not involved in Mona's death.

Dr. Arthur Hume, Associate Professor of Pharmacology and Toxicology at the University Medical Center and Toxicologist for the Mississippi Crime Laboratory, examined and tested blood samples, tissues of vital organs, gastric contents and other samples from Mona's body on December 9th, 1970, the day after her body was found, for poisons and drugs. Dr. Hume testified that he would consider Liquid Plumr a poison. He found no poison of any kind in her system. He did find a slight trace of dramamine, a stomach settler.

Dr. Milton Helpern, the chief medical examiner of the city of New York, after examining the autopsy reports, testified that he could not state with certainty the cause of death. He testified as to possible causes only.

Dr. Lucien L. Leape, a pediatric surgeon with the University of Kansas Medical School, who had made a special study of problems linked with lye ingestion by children, testified that he could not say what was the cause of death. He did testify that he had never heard of any child dying as a result of swallowing Liquid Plumr.

The testimony of all of these witnesses, and the exhibits introduced, were for the consideration of the trial jury. We feel that there was ample evidence in the record to prove the corpus delicti beyond a reasonable doubt and to the exclusion of every *reasonable* theory consistent with innocence.

The next assignment of error was that the two oral statements made by appellant were inadmissible under the fifth, sixth, and fourteenth amendments to the Constitution of the United States.

It must be remembered, in discussing this assignment of error, that the appellant and her husband, Ted L. Biddy, asked the Jackson Police Department for its help in locating their mentally retarded daughter. Every lead that the police would get was discussed and examined with the Biddys. The police were in constant touch with the Biddys and the Biddys with them. Both were apparently interested in what had happened to Mona Biddy.

It must also be kept in mind that, at the specific instance of the Biddys, the Jackson Police Department and its trained and skilled investigators and indeed the law enforcement officers of both Hinds and Rankin Counties and of the State of Mississippi, had expended a tremendous

amount of time and effort and thought into solving the problem of what had happened to Mona.

On December 15, 1970, the police had found another item of clothing apparently worn by Mona at the time of her disappearance, so they contacted Mrs. Biddy, and she called her husband. The end result was that Mr. and Mrs. Biddy came down to police headquarters.

Lieutenant Wesley L. Reeves, Jackson Police Department, who had been on the case from the beginning, in the presence of Lieutenant Price of the Jackson Police Department, and Thomas Zebert, County Attorney of Rankin County, asked Mrs. Biddy to go over once again the details of Mona's disappearance. Reeves testified that after she had done this:

"Then we told her we'd like to talk to her about it, and before we did, we would like to advise her of her rights.

"Q All right. Now, who was in this conference room at this time?

"A Lieutenant Price, myself, and Mr. Zebert, Tom Zebert.

"Q And you four were the only ones in there?

"A Yes sir.

"Q All right. Then, what did you do then?

"A I told her that she did not have to talk to us; that she was entitled to an attorney, and what she did say could be used against her in court.

"In fact, I then told her that we had a list of her rights on a statement blank, and I would like for Lieutenant Price to read them to her, so she would understand it.

"Lieutenant Price did read this statement of her rights, one at a time, and then I asked her if she under-

stood each, and she said she did. Mr. Zebert asked her if she understood them, and she said she did.

"We asked her what education she had, and she said she was a high school graduate. We were convinced that she understood her rights.

"Q Did she tell you where she had been employed previously?

"A Yes sir. She had been employed as a secretary for Michael Baker, an engineering firm.

"Q What kind of spirit was she in at this time?

"A She was very cooperative. She seemed to be in good spirits."

At this time she signed a written waiver, which set forth her rights in detail. Reeves, Price and Zebert then signed as witnesses to her signature. She denied any involvement in Mona's disappearance.

Later on December 15th Mrs. Biddy and her husband went in their car to Highway Patrol Headquarters. Her rights were again explained to her and she signed a second detailed waiver.

On the night of December 16th, Lieutenant Reeves, while off-duty and at his home, received a telephone call from the Biddys reporting that appellant had been attacked and stabbed. The Biddys wanted him to come to their home, so he called Lieutenant Price and they went to the Biddy home. Mrs. Biddy told them about the attack and how she had gotten away from her assailant. She had a superficial cut on her hip.

Late at night on December 26, 1970, Lt. Reeves received another telephone call from the Biddy home. It was reported to him that 2½-year-old Candice Biddy had been kidnapped. It was a very cold night and Lt. Reeves went immediately to the Biddy home. Mrs. Biddy stated

that someone came in the window, came by Mr. Biddy who was asleep in the den, got Candice, and went back out the window, tying up the family dog and putting him into the closet. Mr. Biddy found Candice, scantily clad, near a ditch in the Biddy backyard. Lt. Reeves checked the window that Mrs. Biddy had pointed out and found dust on the windowsill that had not been disturbed.

Lt. Reeves was advised by Mr. and Mrs. Biddy that they were going to Georgia on the next day, December 27th, to visit Mr. Biddy's parents. Early on the morning of December 27th Lts. Reeves and Price went back to the Biddy home, looked around the backyard and the ditch but could find no evidence that someone had kidnapped Candice.

Being advised that the Biddys were ready to leave town and that Mr. Biddy would like to talk to them, the Biddys followed Reeves and Price back to police headquarters in their own car.

Out of the presence of Mrs. Biddy, Reeves and Price told Mr. Biddy that they had found that Mrs. Biddy had not modeled clothes for a local clothing store and received clothes for her services, as both Mrs. Biddy and Mr. Biddy had told them. They also told Mr. Biddy that Mrs. Biddy had not gone to a health studio once a week, as she had told them. Reeves and Price also told Mr. Biddy that their investigation of the assault and stabbing of Mrs. Biddy had convinced them that it did not happen. Mr. Biddy agreed with them. They also informed Mr. Biddy that Candice Biddy had not been kidnapped as Mrs. Biddy reported. Biddy agreed with them on this and asked to talk to his wife.

Before they had a chance to talk very much, Reeves was advised that Mr. Charles Wright, a local attorney who

had been called by Mr. Biddy's partner, Mal Sims, was downstairs and wanted to see Biddy. While Wright and Biddy were talking, Reeves and Price told Mrs. Biddy that they would like to ask her some questions, and before asking her any questions Lieutenant Reeves said:

"[D]o you understand your rights? You have been advised of your rights before.' and she said, yes, she understood them.

"At that time, Mr. Biddy and Mr. Wright came back. Mr. Biddy came into the room, Mr. Wright stood at the door. He had told me previously that he was ill, and would have to go home. So, he left.

"Q Was Mrs. Biddy aware of the fact that Mr. Wright was there?

"A He came to the door, and the door was open. She was sitting right by the door. They did not talk, but he talked to Mr. Biddy.

"Q And did Mr. Biddy come in and talk to Mrs. Biddy?

"A Yes sir.

"Q All right. Tell me what happened.

"A At that time, Mr. Biddy began to talk to Mrs. Biddy, and asking her about these different instances, about the clothing store, about the health studio, about the stabbing and the kidnapping.

"She admitted that she had not worked for the clothing store, and she partially admitted not having gone to the health studio as regularly as she had claimed to be going.

"She admitted that she had faked the stabbing, and had faked the kidnapping.

"At this time, Mr. Biddy became very emotionally upset, and—

"Q What about the appearance of the defendant, Mrs. Carolee Biddy? How was she at this time?

"A She was a little emotional, not very much, at that time. She seemed like she wanted to tell him something.

"At that time I told her 'Mrs. Biddy, now is a good time to tell Mr. Biddy if you were involved in the disappearance of Mona'. I told her that Mona was gone, she wouldn't—couldn't come back, and that she was afflicted, that the doctors had told us she would never get any better, and that now would be a good time to talk to her hubsand.

"They were sitting facing each other, holding hands. She looked straight at Mr. Biddy, and said, 'Ted, I am sorry I did it.' She said 'Ted, I didn't mean to do it.' And she broke down. She stopped what she was going to say."

Mrs. Biddy then continued her story of what happened the night of December 2nd. Mona had gotten hold of some Liquid Plumr at about 7:30 P.M., had drunk some of it, that it made her violently ill and she vomited. Mrs. Biddy tried to feed her but Mona could not eat. Mrs. Biddy called Dr. Howard Nichols, her pediatrician, and Dr. Nichols advised her to examine Mona's mouth and if her mouth was burned on the inside to call him back. If Mona's mouth was not burned, she was all right and just give her something to settle her stomach. Mrs. Biddy put Mona to bed around 8:30 P.M. Mrs. Biddy went by Mona's bed about 10:30 P.M. and found her "scooted down the bed" with the bed clothing wrapped around her head. Lt. Reeves continued:

"She said she unwrapped the bed clothing and couldn't get any response from Mona. She said this frightened her, and she picked Mona up and took her out to the den, and laid her down on the couch. She said she just flopped down.

"She said she started to call Ted, but she was afraid that people would think that she had something to do with it; that she had realized she was dead, and she was afraid to call Ted, she said.

"She started to call a doctor, and she just decided to get rid of the body, and take the body so they wouldn't blame her with it. She carried her out and put her in her car and drove to the reservoir.

"She drove to a particular spot near the Lakeview Marina, because she and Ted had spent a lot of time out there in the past. She said she put the body down near the bank, kissed it on the forehead, and left it there so it would be found, and then she came back home."

We think that this testimony was properly admitted. It is perfectly clear to us that Mrs. Biddy thoroughly understood her rights and that she had intelligently waived them, not once but twice in writing, and also several times orally. Even on December 27th, immediately before her statements she acknowledged that she understood her rights. There are no magic words that law officers must meticulously repeat each time they question a person. This conclusion was also reached in *Maguire* v. *United States,* 396 F.2d 327 (9th Cir. 1968); *Sossamon* v. *State,* 432 S.W.2d 469 (Ark. 1968); *People* v. *Hill,* 58 Cal. Rptr. 340, 426 P.2d 908 (1967); *State* v. *Graves,* 259 La. 526, 250 So.2d 727 (1971); *State* v. *Rowe,* 468 P.2d 1000 (Wash. 1970).

Appellant next contends that the court erred in granting an instruction advising the jury that should they convict appellant of manslaughter, the court might sentence appellant to the penitentiary for a term not to exceed twenty years.

This is the instruction complained of:

> "The Court instructs the Jury for the State of Mississippi that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Carolee Biddy, is guilty of manslaughter, you should certify to the Court the following verdict, to-wit:
>
> We the Jury, find the Defendant guilty of manslaughter.
>
> Whereupon the Court might sentence the Defendant to serve a term of years in the penitentiary, not to exceed 20 years."

This same contention was made long ago in *Stevenson* v. *State,* 136 Miss. 22, 100 So. 525 (1924). The Court in *Stevenson* answered this argument in this way:

> "In the case now before us the instruction informed the jury that in case of a conviction of manslaughter the court might sentence the defendant to serve a term of years in the penitentiary, not to exceed twenty years. We do not think that this instruction can properly be said to be an invitation or inducement to the jury to compromise on the lesser offense, and, if this instruction was error at all, it was not prejudicial to the rights of the appellant and will not justify a reversal under the facts of this record." 136 Miss. at 29-30, 100 So. at 526.

In *Blalock* v. *State,* 148 Miss. 1, 113 So. 627 (1927), in ruling on a similar manslaughter instruction, the Court had this to say:

> "In the case before us, the instruction on the punishment for manslaughter does not call the jury's attention to the minimum punishment, and does not,

by inference, lead the jury to believe that, if so convicted, a light punishment will be inflicted. We think this distinction important between the Ellerbe case and this one. It is one thing to hold out the definition of a minimum punishment, and another to tell the jury of a maximum punishment. It was, in our opinion, the singling out, in the Ellerbe case, the minimum features of punishment for manslaughter, that produced the reversal therein. It is difficult to see how it prejudices the right of a person being tried for a crime for the jury to know what the punishment is that may follow a conviction for that crime. It is true that the court administers the punishment, except in capital cases, and some others not here involved, and that the jury should not be told anything in reference to what that punishment will be; but we fail to see how the present instruction prejudiced the defendant's rights. It certainly did not lead the jury to believe he would be dealt with leniently. The maximum was stated, and the minimum was left out.

"In so far as the effect on the jury is concerned, we cannot see it had any harmful effect upon his rights. Anything less than twenty years for manslaughter is in the discretion of the court, and it does in no wise prejudice the defendant's rights for the jury to know what the maximum would be. At least, we think it is apparent that his rights were not so prejudiced as to cause the court to reverse a judgment therefor. *Stevenson* v. *State*, 136 Miss. 22, 100 So. 525. We hold, therefore, that there is no reversible error in this objection to the instruction." 148 Miss. at 5, 113 So. at 628.

The final assignment of error was that the trial court erred in overruling the motion to vacate the judgment

because the jury verdict was returned on Sunday and the trial judge sentenced the appellant on Sunday.

The five-day trial was concluded on Friday, September 3, 1971, and the jury on that day, with the exhibits and written instructions of the Court, retired to the jury room to consider what verdict they should return. They were unable to reach a verdict and they resumed their deliberations on Saturday, September 4th. Still being unable to reach a verdict, they resumed their deliberations about 9:30 A.M., Sunday, September 5th, and about 2:30 P.M. they returned their verdict in open court. Monday, September 6, 1971, would be Labor Day. So, the Court inquired of Counsel for the Defendant whether they desired that sentence be deferred until a later date. Counsel for the Defendant responded that they did not so desire. Whereupon, the Court sentenced the Defendant to twenty (20) years in the State Penitentiary.

In *Burrage* v. *State*, 101 Miss. 598, 58 So. 217 (1912), a murder prosecution was concluded on Saturday night, and the jury returned its verdict into court at 12:06 A.M. Sunday morning. In that case, it was contended that the verdict and judgment were null and void because rendered on Sunday. This Court affirmed the conviction and sentence, stating:

> "It is true that we have no statute providing that verdicts may be received on Sunday, and it may be that a judgment rendered on Sunday is void, but 'in regard to the delivery and reception of verdicts a different rule applies, as the rendering of a verdict is a mere ministerial act, and it is an act of necessity and charity to receive it and not keep the jurors confined until Monday.'" 101 Miss. at 606-607, 58 So. at 219.

In *State* v. *Foss*, 158 La. 471, 104 So. 211 (1925), trial was begun on Friday and the taking of evidence was con-

cluded on Saturday night at 11:20. Counsel for defendant stated to the court that he was eager to continue the trial. Whereupon, the prosecutor objected on the ground that if the trial proceeded and resulted in conviction that the continuation of the proceeding on Sunday might be urged as a ground for a new trial. Defense counsel gave his word that if the case were allowed to proceed no advantage would be taken of the fact that some of the proceedings had been held on Sunday. The case proceeded, with argument of counsel ending at 12:25 A.M. Sunday, at which time the jury was charged and the verdict was returned and recorded at 2:00 A.M., Sunday.

Appellate defense counsel (not the trial defense counsel) urged that these Sunday proceedings were void. In *Foss*, the Supreme Court of Louisiana held:

> "An accused has no right to stand by and suffer proceedings to take place on a 'statutory holiday,' and after verdict, in a motion to quash, ask to have the proceedings reversed on the ground that it was a holiday.
>
> "The objection should not have been postponed until after verdict, nor urged for the first time in motion in arrest.
>
> . . .
>
> "Moreover, the proceedings on a statutory legal holiday are not necessarily null. They may be held on that day by consent. Besides, an accused may be concluded by his silence, if he chooses to remain silent when he is represented by counsel amply able to protect his rights.
>
> . . .
>
> "[A]n accused may waive his constitutional, statutory, or common-law rights, except when for-

bidden by some superior counter principle of law deemed necessary for his protection.

"There is no constitutional, statutory, or common-law principle which forbids an accused party from consenting to have his case argued, submitted, and determined by the jury and court on Sunday or a statutory legal holiday. . . .

. . .

*"There is no question of the waiver of jurisdiction in this case. The court and the jury were legally constituted, and were competent to try the issue of guilt or innocence between the state and the accused.* The only question was whether the case should proceed to its conclusion on Sunday or be postponed to a future day.

*"Whether a trial shall take place on one day rather than another can in no sense be said to affect the jurisdiction and competence of the court.*

"The objection is purely technical and dilatory in its nature. If it had been made at the proper time, the case would have been delayed to another day, with the same result. The defendant has suffered no detriment caused by the continuance of the trial on Sunday.

"An accused party at whose instance and on whose persuasive promise a case has been continued and concluded on Sunday, and who took the chances of an acquittal, should not be permitted, after verdict of conviction, to challenge the regularity and legality of such proceedings.

"To ignore his request and promise to the court and district attorney whereby he gained a speedy determination of his case, and to set aside the verdict

on the ground urged, would be a palpable miscarriage of justice, destroy the sanctity of the court, and make a mockery of judicial procedure.

*"Our conclusion is that the prohibition of the continuance of the trial on Sunday of a case already begun does not affect the jurisdiction and competence of the court, and is not such as cannot be waived by an accused party."* 158 La. at 475-478, 104 So. at 212-214. (Emphases added).

The judgment of the Circuit Court is affirmed.

AFFIRMED.

GILLESPIE, C. J., and PATTERSON, INZER and BROOM, JJ., CONCUR.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 47,095

NO. 47,100

MRS. CAROLEE BIDDY

V.

STATE OF MISSISSIPPI

INZER, JUSTICE:

ON PETITION FOR REHEARING

The only assignment of error in the Petition for Rehearing is:

THE COURT DID NOT FULLY CONSIDER THE ADMISSIBILITY OF THE STATEMENT OF APPELLANT.

In her brief in support of her Petition for Rehearing, appellant quotes from *Miranda* v. *Arizona*, 384 U. S. 436, 444, 445, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 707 (1966):

> *If, however, he indicates in any manner and at any stage of the process that he wishes to consult an attorney before speaking there can be no questioning. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with an attorney and have him present during any subsequent questioning.* (Emphasis added).

In our original opinion, we discussed at length the two occasions on December 15, 1970, when appellant's *Miranda* rights were explained orally in detail, and when she signed two written waivers setting forth her rights

in detail. We quoted the testimony of Lt. Reeves wherein he testified that on December 27, 1970, he again asked Mrs. Biddy if she understood her rights, and she replied that she understood them.

After a careful search of the record, we find that nowhere in this record does Mrs. Biddy, the appellant, request, indicate, hint or express a desire to speak with or consult an attorney; although she was well aware that an attorney was available. Nowhere in any shape, form or fashion does she express a desire to have an attorney present during any questioning, nor does her husband express any wish or desire to have an attorney present.

All statements that Mrs. Biddy made on December 27, 1970, were made freely and voluntarily and mostly on the solicitation of her husband.

Ted L. Biddy, the husband of appellant Carolee Biddy, testified for the defense on direct examination as follows:

> Q. Then, if you remember, what did you say to Carolee or Detective Price or Reeves?
>
> A. Well, I was up real close to her, I had her hands in mine, I was right up next to her. I told her, I says, "Honey, I've got something very serious to say to you now. They have told me that they have found no evidence that you were attacked that night, nor that Candace was abducted last night and they believe that you staged these as hoaxes."
>
> Q. Go right ahead.
>
> A. Well, she admitted that they were true by shaking her head affirmatively that she had. She was emotional, of course, during this. I then told her that there was something else that they had told me that I wanted to tell her and that was that they had told me that they had three witnesses who had seen a woman, fitting her description, walking around in a

rose nightgown at the Main Harbor Marina on the night Mona disappeared.

Q. What did Carolee go on and say, what was her story?

A. Well, Lieutenant Reeves and Lieutenant Price started talking to her and asking her about it and she says, "Well, I said I did not go in to check on Mona before I went to bed but I did." She said that she had watched some TV program and had dozed off, it was 10:30 or 11:00 o'clock, and that she went in to check on her before going to bed and she couldn't see Mona in the bed. She said all she could see was a big fluffy pillow and she went over to get her out from under the covers; it was nothing unusual for Mona, she was a hyperactive child, and she would be a lot of times under the cover. No one could sleep with Mona because she was so hyperactive. She said that she went to get her out from under the covers and pull her up in the bed, straighten her up, and the covers were all twisted around her and that when she raised the covers up that it pulled Mona up with it and when the covers came off she fell back and she knew immediately something was wrong. She said she picked her up on her shoulder and took her into the den, laid her down on the couch with her head in her lap and checked her in every possible way, her breathing, her pulse, shaking her and finally realized that she was dead.

Q. What did she then tell the policeman that she did?

A. She said that she panicked. She said she could just see my ex-wife Ruth's face; that she knew she would be blamed. She said she started to come get me. She started to call the doctor but she could just see my ex-wife's face and that she panicked. And

that she picked her up, put her in the front seat of our car; she said she drove and didn't know where she was going but the next thing she remembers she was on the reservoir levee road and that she went to the area of the Lake View Marina, took her body out of the car, took her over to the edge of the bank on a grassy spot, laid her down, kissed her and drove back home. She said she couldn't remember anything about driving back home except that the car almost went out of control one time.

In summary, it is apparent from the record in this case that all of the constitutional rights of Mrs. Biddy had been fully explained to her, she fully understood them, and with this knowledge, she freely and voluntarily made the statements complained of, mostly at the solicitation of her husband. It is not contended that she was in any way coerced, threatened or made any promises by the officers. She never at any time expressed any desire to speak with or consult with the attorney with whom her husband conferred. Neither did she express any desire to consult with any other attorney or have an attorney present before she made any statement. A statement made under these circumstances certainly should be and is admissible in evidence.

For the reasons stated the petition for rehearing is denied.

ALL JUSTICES CONCUR.